

including trade execution and settlement, finance and accounting, payments, operations, book keeping, cash management, cash forecasting, accounts payable, accounts receivable, expense reimbursement, vendor management, and information technology (including, without limitation, general support and maintenance (OMS, development, support), telecom (cellphones, telephones and broadband) and WSO);

(b) *Legal/Compliance/Risk Analysis.* Assistance and advice with respect to legal issues, litigation support, management of outside counsel, compliance support and implementation and general risk analysis;

(c) *Tax.* Assistance and advice with respect to tax audit support, tax planning and tax preparation and filing.

(d) *Management of Clients and Accounts.* Assistance and advice with respect to (i) the adherence to Operating Guidelines by the Management Company, and (ii) performing any obligations of the Management Company under or in connection with any back- and middle-office function set forth in any portfolio management agreement, investment management agreement or similar agreement in effect between the Management Company and any Client or Account from time to time.

(e) *Valuation.* Advice relating to the appointment of suitable third parties to provide valuations on assets comprising the Portfolio and including, but not limited to, such valuations required to facilitate the preparation of financial statements by the Management Company or the provision of valuations in connection with, or preparation of reports otherwise relating to, a Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity;

(f) *Execution and Documentation.* Assistance relating to the negotiation of the terms of, and the execution and delivery by the Management Company of, any and all documents which the Management Company considers to be necessary in connection with the acquisition and disposition of an asset in the Portfolio by the Management Company or a Client or Account managed by the Management Company, transactions involving the Management Company or a Client or Account managed by the Management Company, and any other rights and obligations of the Management Company or a Client or Account managed by the Management Company;

(g) *Marketing.* Provide access to marketing team representatives to assist with the marketing of the Management Company and any specified Clients or Accounts managed by the Management Company conditional on the Management Company's agreement that any incentive compensation related to such marketing shall be borne by the Management Company;

(h) *Reporting.* Assistance relating to any reporting the Management Company is required to make in relation to the Portfolio or any Client or Account, including reports relating to (i) credit facility reporting and purchases, sales, liquidations, acquisitions, disposals, substitutions and exchanges of assets in the Portfolio, (ii) the requirements of an applicable regulator, or (iii) other type of reporting which the Management Company and Staff and Services Provider may agree from time to time;



(i) *Administrative Services.* The provision of office space, information technology services and equipment, infrastructure, rent and parking and other related services requested or utilized by the Management Company from time to time;

(j) *Shared Employees.* To the extent applicable, the provision of Shared Employees and such additional human capital as may be mutually agreed by the Management Company and the Staff and Services Provider in accordance with the provisions of Section 2.03 hereof;

(k) *Ancillary Services.* Assistance and advice on all things ancillary or incidental to the foregoing; and

(l) *Other.* Assistance and advice relating to such other back- and middle-office services in connection with the day-to-day business of the Management Company as the Management Company and the Staff and Services Provider may from time to time agree.

For the avoidance of doubt, none of the services contemplated hereunder shall constitute investment advisory services, and the Staff & Services Provider shall not provide any advice to the Management Company or perform any duties on behalf of the Management Company, other than the back- and middle-office services contemplated herein, with respect to (a) the general management of the Management Company, its business or activities, (b) the initiation or structuring of any Client or Account or similar securitization, (c) the substantive investment management decisions with respect to any Client or Account or any related collateral obligations or securitization, (d) the actual selection of any collateral obligation or assets by the Management Company, (e) binding recommendations as to any disposal of or amendment to any Collateral Obligation or (f) any similar functions.

#### Section 2.03 Shared Employees.

(a) The Staff and Services Provider hereby agrees and consents that each Shared Employee, if any, shall be employed by the Management Company, and the Management Company hereby agrees and consents that each Shared Employee shall be employed by the Staff and Services Provider. Except as may otherwise separately be agreed in writing between the applicable Shared Employee and the Management Company and/or the Staff and Services Provider, in each of their discretion, each Shared Employee is an at-will employee and no guaranteed employment or other employment arrangement is agreed or implied by this Agreement with respect to any Shared Employee, and for avoidance of doubt this Agreement shall not amend, limit, constrain or modify in any way the employment arrangements as between any Shared Employee and the Staff and Services Provider or as between any Shared Employee and the Management Company, it being understood that the Management Company may enter into a short-form employment agreement with any Shared Employee memorializing such Shared Employee's status as an employee of the Management Company. To the extent applicable, the Staff and Services Provider shall ensure that the Management Company has sufficient access to the Shared Employees so that the Shared Employees spend adequate time to provide the services required hereunder. The Staff and Services Provider may also employ the services of persons other than the Specified Persons as it deems fit in its sole discretion



(b) Notwithstanding that the Shared Employees, if any, shall be employed by both the Staff and Services Provider and the Management Company, the Parties acknowledge and agree that any and all salary and benefits of each Shared Employee shall be paid exclusively by the Staff and Services Provider and shall not be paid or borne by the Management Company and no additional amounts in connection therewith shall be due from the Management Company to the Staff and Services Provider.

(c) To the extent that a Shared Employee participates in the rendering of services to the Management Company's clients, the Shared Employee shall be subject to the oversight and control of the Management Company and such services shall be provided by the Shared Employee exclusively in his or her capacity as a "supervised person" of, or "person associated with", the Management Company (as such terms are defined in Sections 202(a)(25) and 202(a)(17), respectively, of the Advisers Act).

(d) Each Party may continue to oversee, supervise and manage the services of each Shared Employee in order to (1) ensure compliance with the Party's compliance policies and procedures, (2) ensure compliance with regulations applicable to the Party and (3) protect the interests of the Party and its clients; *provided* that Staff and Services Provider shall (A) cooperate with the Management Company's supervisory efforts and (B) make periodic reports to the Management Company regarding the adherence of Shared Employees to Applicable Law, including but not limited to the 1940 Act, the Advisers Act and the United States Commodity Exchange Act of 1936, as amended, in performing the services hereunder.

(e) Where a Shared Employee provides services hereunder through both Parties, the Parties shall cooperate to ensure that all such services are performed consistently with Applicable Law and relevant compliance controls and procedures designed to prevent, among other things, breaches in information security or the communication of confidential, proprietary or material non-public information.

(f) The Staff and Services Provider shall ensure that each Shared Employee has any registrations, qualifications and/or licenses necessary to provide the services hereunder.

(g) The Parties will cooperate to ensure that information about the Shared Employees is adequately and appropriately disclosed to clients, investors (and potential investors), investment banks operating as initial purchaser or placement agent with respect to any Client or Account, and regulators, as applicable. To facilitate such disclosure, the Staff and Services Provider agrees to provide, or cause to be provided, to the Management Company such information as is deemed by the Management Company to be necessary or appropriate with respect to the Staff and Services Provider and the Shared Employees (including, but not limited to, biographical information about each Shared Employee).

(h) The Parties shall cooperate to ensure that, when so required, each has adopted a Code of Ethics meeting the requirements of the Advisers Act ("Code of Ethics") that is consistent with applicable law and which is substantially similar to the other Party's Code of Ethics.



(i) The Staff and Services Provider shall make reasonably available for use by the Management Company, including through Shared Employees providing services pursuant to this Agreement, any relevant intellectual property and systems necessary for the provision of the services hereunder.

(j) The Staff and Services Provider shall require that each Shared Employee:

(i) certify that he or she is subject to, and has been provided with, a copy of each Party's Code of Ethics and will make such reports, and seek prior clearance for such actions and activities, as may be required under the Codes of Ethics;

(ii) be subject to the supervision and oversight of each Party's officers and directors, including without limitation its Chief Compliance Officer ("CCO"), which CCO may be the same Person, with respect to the services provided to that Party or its clients;

(iii) provide services hereunder and take actions hereunder only as approved by the Management Company;

(iv) provide any information requested by a Party, as necessary to comply with applicable disclosure or regulatory obligations;

(v) to the extent authorized to transact on behalf of the Management Company or a Client or Account, take reasonable steps to ensure that any such transaction is consistent with any policies and procedures that may be established by the Parties and all Applicable Asset Criteria and Concentrations; and

(vi) act, at all times, in a manner consistent with the fiduciary duties and standard of care owed by the Management Company to its members and direct or indirect investors or to a Client or Account as well as clients of Staff and Services Provider by seeking to ensure that, among other things, information about any investment advisory or trading activity applicable to a particular client or group of clients is not used to benefit the Shared Employee, any Party or any other client or group of clients in contravention of such fiduciary duties or standard of care.

(k) Unless specifically authorized to do so, or appointed as an officer or authorized person of the Management Company with such authority, no Shared Employee may contract on behalf or in the name of the Management Company, acting as principal.

Section 2.04 Applicable Asset Criteria and Concentrations. The Management Company will promptly inform the Staff and Services Provider in writing of any Applicable Asset Criteria and Concentrations to which it agrees from time to time and the Staff and Services Provider shall take such Applicable Asset Criteria and Concentrations into account when providing assistance and advice in accordance with Section 2.02 above and any other assistance or advice provided in accordance with this Agreement.

Section 2.05 Compliance with Management Company Policies and Procedures. The Management Company will from time to time provide the Staff and Services Provider and the



Shared Employees, if any, with any policy and procedure documentation which it establishes internally and to which it is bound to adhere in conducting its business pursuant to regulation, contract or otherwise. Subject to any other limitations in this Agreement, the Staff and Services Provider will use reasonable efforts to ensure any services it and the Shared Employees provide pursuant to this Agreement complies with or takes account of such internal policies and procedures.

Section 2.06 Authority. The Staff and Services Provider's scope of assistance and advice hereunder is limited to the services specifically provided for in this Agreement. The Staff and Services Provider shall not assume or be deemed to assume any rights or obligations of the Management Company under any other document or agreement to which the Management Company is a party. Notwithstanding any other express or implied provision to the contrary in this Agreement, the activities of the Staff and Services Provider pursuant to this Agreement shall be subject to the overall policies of the Management Company, as notified to the Staff and Services Provider from time to time. The Staff and Services Provider shall not have any duties or obligations to the Management Company unless those duties and obligations are specifically provided for in this Agreement (or in any amendment, modification or novation hereto or hereof to which the Staff and Services Provider is a party).

Section 2.07 Third Parties.

(a) The Staff and Services Provider may employ third parties, including its affiliates, to render advice, provide assistance and to perform any of its duties under this Agreement; *provided* that notwithstanding the employment of third parties for any such purpose, the Staff and Services Provider shall not be relieved of any of its obligations or liabilities under this Agreement.

(b) In providing services hereunder, the Staff and Services Provider may rely in good faith upon and will incur no liability for relying upon advice of nationally recognized counsel (which may be counsel for the Management Company, a Client or Account or any Affiliate of the foregoing), accountants or other advisers as the Staff and Services Provider determines, in its sole discretion, is reasonably appropriate in connection with the services provided by the Staff and Services Provider under this Agreement.

Section 2.08 Management Company to Cooperate with the Staff and Services Provider. In furtherance of the Staff and Services Provider's obligations under this Agreement the Management Company shall cooperate with, provide to, and fully inform the Staff and Services Provider of, any and all documents and information the Staff and Services Provider reasonably requires to perform its obligations under this Agreement.

Section 2.09 Power of Attorney. If the Management Company considers it necessary for the provision by the Staff and Services Provider of the assistance and advice under this Agreement (after consultation with the Staff and Services Provider), it may appoint the Staff and Services Provider as its true and lawful agent and attorney, with full power and authority in its name to sign, execute, certify, swear to, acknowledge, deliver, file, receive and record any and all documents that the Staff and Services Provider reasonably deems appropriate or necessary in connection with the execution and settlement of acquisitions of assets as directed by the Management Company



and the Staff and Services Provider's powers and duties hereunder (which for the avoidance of doubt shall in no way involve the discretion and/or authority of the Management Company with respect to investments). Any such power shall be revocable in the sole discretion of the Management Company.

### ARTICLE III

#### CONSIDERATION AND EXPENSES

Section 3.01 Consideration. As compensation for its performance of its obligations as Staff and Services Provider under this Agreement, the Staff and Services Provider will be entitled to receive a flat fee of \$168,000 per month (the "Staff and Services Fee"), payable monthly in advance on the first business day of each month.

Section 3.02 Costs and Expenses. Each party shall bear its own expenses; *provided that* the Management Company shall reimburse the Staff and Services Provider for any and all costs and expenses that may be borne properly by the Management Company.

Section 3.03 Deferral. Notwithstanding anything to the contrary contained herein, if on any date the Management Company determines that it would not have sufficient funds available to it to make a payment of Indebtedness, it shall have the right to defer any all and amounts payable to the Staff and Services Provider pursuant to this Agreement, including any fees and expenses; *provided that* the Management Company shall promptly pay all such amounts on the first date thereafter that sufficient amounts exist to make payment thereof.

### ARTICLE IV

#### REPRESENTATIONS AND COVENANTS

Section 4.01 Representations. Each of the Parties hereto represents and warrants that:

(a) It has full power and authority to execute and deliver, and to perform its obligations under, this Agreement;

(b) this Agreement has been duly authorized, executed and delivered by it and constitutes its valid and binding, obligation, enforceable in accordance with its terms except as the enforceability hereof may be subject to (i) bankruptcy, insolvency, reorganization moratorium, receivership, conservatorship or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding, in equity or at law);

(c) no consent, approval, authorization or order of or declaration or filing with any Governmental Authority is required for the execution of this Agreement or the performance by it of its duties hereunder, except such as have been duly made or obtained; and

(d) neither the execution and delivery of this Agreement nor the fulfillment of the terms hereof conflicts with or results in a breach or violation of any of the terms or provisions of, or constitutes a default under, (i) its constituting and organizational documents; or (ii) the terms



of any material indenture, contract, lease, mortgage, deed of trust, note, agreement or other evidence of indebtedness or other material agreement, obligation, condition, covenant or instrument to which it is a party or by which it is bound.

## ARTICLE V

### COVENANTS

#### Section 5.01 Compliance: Advisory Restrictions.

(a) The Staff and Services Provider shall reasonably cooperate with the Management Company in connection with the Management Company's compliance with its policies and procedures relating to oversight of the Staff and Services Provider. Specifically, the Staff and Services Provider agrees that it will provide the Management Company with reasonable access to information relating to the performance of Staff and Services Provider's obligations under this Agreement.

(b) This Agreement is not intended to and shall not constitute an assignment, pledge or transfer of any portfolio management agreement or any part thereof. It is the express intention of the parties hereto that this Agreement and all services performed hereunder comply in all respects with all (a) applicable contractual provisions and restrictions contained in each portfolio management agreement, investment management agreement or similar agreement and each document contemplated thereby; and (b) Applicable Laws (collectively, the "Advisory Restrictions"). If any provision of this Agreement is determined to be in violation of any Advisory Restriction, then the services to be provided under this Agreement shall automatically be limited without action by any person or entity, reduced or modified to the extent necessary and appropriate to be enforceable to the maximum extent permitted by such Advisory Restriction.

#### Section 5.02 Records: Confidentiality.

The Staff and Services Provider shall maintain or cause to be maintained appropriate books of account and records relating to its services performed hereunder, and such books of account and records shall be accessible for inspection by representatives of the Management Company and its accountants and other agents at any time during normal business hours and upon not less than three (3) Business Days' prior notice; *provided* that the Staff and Services Provider shall not be obligated to provide access to any non-public information if it in good faith determines that the disclosure of such information would violate any applicable law, regulation or contractual arrangement.

The Staff and Services Provider shall follow its customary procedures to keep confidential any and all information obtained in connection with the services rendered hereunder that is either (a) of a type that would ordinarily be considered proprietary or confidential, such as information concerning the composition of assets, rates of return, credit quality, structure or ownership of securities, or (b) designated as confidential obtained in connection with the services rendered by the Staff and Services Provider hereunder and shall not disclose any such information to non-affiliated third parties, except (i) with the prior written consent of the Management Company, (ii) such information as a rating agency shall reasonably request in connection with its



rating of notes issued by a CLO or supplying credit estimates on any obligation included in the Portfolio, (iii) in connection with establishing trading or investment accounts or otherwise in connection with effecting transactions on behalf of the Management Company or any Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity, (iv) as required by (A) Applicable Law or (B) the rules or regulations of any self-regulating organization, body or official having jurisdiction over the Staff and Services Provider or any of its Affiliates, (v) to its professional advisors (including, without limitation, legal, tax and accounting advisors), (vi) such information as shall have been publicly disclosed other than in known violation of this Agreement or shall have been obtained by the Staff and Services Provider on a non-confidential basis, (vii) such information as is necessary or appropriate to disclose so that the Staff and Services Provider may perform its duties hereunder, (viii) as expressly permitted in the final offering memorandum or any definitive transaction documents relating to any Client or Account, (ix) information relating to performance of the Portfolio as may be used by the Staff and Services Provider in the ordinary course of its business or (xx) such information as is routinely disclosed to the trustee, custodian or collateral administrator of any Client or Account in connection with such trustee's, custodian's or collateral administrator's performance of its obligations under the transaction documents related to such Client or Account. Notwithstanding the foregoing, it is agreed that the Staff and Services Provider may disclose without the consent of any Person (1) that it is serving as staff and services provider to the Management Company, (2) the nature, aggregate principal amount and overall performance of the Portfolio, (3) the amount of earnings on the Portfolio, (4) such other information about the Management Company, the Portfolio and the Clients or Accounts as is customarily disclosed by staff and services providers to management vehicles similar to the Management Company, and (5) the United States federal income tax treatment and United States federal income tax structure of the transactions contemplated by this Agreement and the related documents and all materials of any kind (including opinions and other tax analyses) that are provided to them relating to such United States federal income tax treatment and United States income tax structure. This authorization to disclose the U.S. tax treatment and tax structure does not permit disclosure of information identifying the Staff and Services Provider, the Clients or Accounts or any other party to the transactions contemplated by this Agreement (except to the extent such information is relevant to U.S. tax structure or tax treatment of such transactions).

## ARTICLE VI

### EXCULPATION AND INDEMNIFICATION

Section 6.01 Standard of Care. Except as otherwise expressly provided herein, each Covered Person shall discharge its duties under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. To the extent not inconsistent with the foregoing, each Covered Person shall follow its customary standards, policies and procedures in performing its duties hereunder. No Covered Person shall deal with the income or assets of the Management Company in such Covered Person's own interest or for its own account. Each Covered Person in its respective sole and absolute discretion may separately engage or invest in any other business ventures, including those that may be in competition with the Management Company, and the Management Company will not have any rights in or to such ventures or the income or profits derived therefrom.



Section 6.02 Exculpation. To the fullest extent permitted by law, no Covered Person will be liable to the Management Company, any Member, or any shareholder, partner or member thereof, for (i) any acts or omissions by such Covered Person arising out of or in connection with the conduct of the business of the Management Company or its General Partner, or any investment made or held by the Management Company or its General Partner, unless it is determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, to be the result of gross negligence or to constitute fraud or willful misconduct (as interpreted under the laws of the State of Delaware) (each, a “Disabling Conduct”) on the part of such Covered Person, (ii) any act or omission of any Investor, (iii) any mistake, gross negligence, misconduct or bad faith of any employee, broker, administrator or other agent or representative of such Covered Person, *provided* that such employee, broker, administrator or agent was selected, engaged or retained by or on behalf of such Covered Person with reasonable care, or (iv) any consequential (including loss of profit), indirect, special or punitive damages. To the extent that, at law or in equity, any Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Management Company or any Member, no Covered Person acting under this Agreement shall be liable to the Management Company or to any such Member for its good-faith reliance on the provisions of this Agreement. The exculpations set forth in this Section 6.02 shall exculpate any Covered Person regardless of such Covered Person’s sole, comparative, joint, concurrent, or subsequent negligence.

To the fullest extent permitted by law, no Covered Person shall have any personal liability to the Management Company or any Member solely by reason of any change in U.S. federal, state or local or foreign income tax laws, or in interpretations thereof, as they apply to the Management Company or the Members, whether the change occurs through legislative, judicial or administrative action.

Any Covered Person in its sole and absolute discretion may consult legal counsel, accountants or other advisers selected by it, and any act or omission taken, or made in good faith by such Person on behalf of the Management Company or in furtherance of the business of the Management Company in good-faith reliance on and in accordance with the advice of such counsel, accountants or other advisers shall be full justification for the act or omission, and to the fullest extent permitted by applicable law, no Covered Person shall be liable to the Management Company or any Member in so acting or omitting to act if such counsel, accountants or other advisers were selected, engaged or retained with reasonable care.

Section 6.03 Indemnification by the Management Company. The Management Company shall and hereby does, to the fullest extent permitted by applicable law, indemnify and hold harmless any Covered Person from and against any and all claims, causes of action (including, but not limited to, strict liability, negligence, statutory violation, regulatory violation, breach of contract, and all other torts and claims arising under common law), demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated (“Claims”), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may become involved, as a party or otherwise, or with which any Covered Person may be threatened, relating to or arising out of the investment or other activities of the Management Company or its General Partner, or activities undertaken in connection with the Management Company or its General Partner, or otherwise relating to or



arising out of this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "Proceeding"), whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as "Damages"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from Disabling Conduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from Disabling Conduct of any Covered Persons. Any Covered Person shall be indemnified under the terms of this Section 6.03 regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

Expenses (including attorneys' fees) incurred by a Covered Person in defense or settlement of any Claim that may be subject to a right of indemnification hereunder shall be advanced by the Management Company prior to the final disposition thereof upon receipt of a written undertaking by or on behalf of the Covered Person to repay the amount advanced to the extent that it shall be determined ultimately by a court of competent jurisdiction that the Covered Person is not entitled to be indemnified hereunder. The right of any Covered Persons to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Covered Person's successors, assigns and legal representatives. Any judgments against the Management Company and/or any Covered Persons in respect of which such Covered Person is entitled to indemnification shall first be satisfied from the assets of the Management Company, including Drawdowns, before such Covered Person is responsible therefor.

Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 6.03 shall not be construed so as to provide for the indemnification of any Covered Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such indemnification would be in violation of applicable law, but shall be construed so as to effectuate the provisions of this Section 6.03 to the fullest extent permitted by law.

Section 6.04 Other Sources of Recovery etc. The indemnification rights set forth in Section 6.03 are in addition to, and shall not exclude, limit or otherwise adversely affect, any other indemnification or similar rights to which any Covered Person may be entitled. If and to the extent that other sources of recovery (including proceeds of any applicable policies of insurance or indemnification from any Person in which any of the Clients or Accounts has an investment) are available to any Covered Person, such Covered Person shall use reasonable efforts to obtain recovery from such other sources before the Company shall be required to make any payment in respect of its indemnification obligations hereunder; *provided* that, if such other recovery is not available without delay, the Covered Person shall be entitled to such payment by the Management Company and the Management Company shall be entitled to reimbursement out of such other recovery when and if obtained.



Section 6.05 Rights of Heirs, Successors and Assigns. The indemnification rights provided by Section 6.03 shall inure to the benefit of the heirs, executors, administrators, successors and assigns of each Covered Person.

Section 6.06 Reliance. A Covered Person shall incur no liability to the Management Company or any Member in acting upon any signature or writing reasonably believed by him, her or it to be genuine, and may rely in good faith on a certificate signed by an officer of any Person in order to ascertain any fact with respect to such Person or within such Person's knowledge. Each Covered Person may act directly or through his, her or its agents or attorneys.

## ARTICLE VII

### TERMINATION

Section 7.01 Termination. Either Party may terminate this Agreement at any time upon at least thirty (30) days' written notice to the other.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01 Amendments. This Agreement may not be amended or modified except by an instrument in writing signed by each Party.

Section 8.02 Assignment and Delegation.

(a) Neither Party may assign, pledge, grant or otherwise encumber or transfer all or any part of its rights or responsibilities under this Agreement, in whole or in part, except (i) as provided in clauses (b) and (c) of this Section 8.02, without the prior written consent of the other Party and (ii) in accordance with Applicable Law.

(b) Except as otherwise provided in this Section 8.02, the Staff and Services Provider may not assign its rights or responsibilities under this Agreement unless (i) the Management Company consents in writing thereto and (ii) such assignment is made in accordance with Applicable Law.

(c) The Staff and Services Provider may, without satisfying any of the conditions of Section 8.02(a) other than clause (ii) thereof, (1) assign any of its rights or obligations under this Agreement to an Affiliate; *provided* that such Affiliate (i) has demonstrated ability, whether as an entity or by its principals and employees, to professionally and competently perform duties similar to those imposed upon the Staff and Services Provider pursuant to this Agreement and (ii) has the legal right and capacity to act as Staff and Services Provider under this Agreement, or (2) enter into (or have its parent enter into) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity; *provided* that, at the time of such consolidation, merger, amalgamation or transfer the resulting, surviving or transferee entity assumes all the obligations of the Staff and Services Provider under this Agreement generally (whether by operation of law or by contract) and the other entity is a continuation of the Staff and Services Provider in another corporate or similar form and has



substantially the same staff; *provided further* that the Staff and Services Provider shall deliver ten (10) Business Days' prior notice to the Management Company of any assignment or combination made pursuant to this sentence. Upon the execution and delivery of any such assignment by the assignee, the Staff and Services Provider will be released from further obligations pursuant to this Agreement except to the extent expressly provided herein.

Section 8.03 Non-Recourse; Non-Petition.

(a) The Staff and Services Provider agrees that the payment of all amounts to which it is entitled pursuant to this Agreement shall be payable by the Management Company only to the extent of assets held in the Portfolio.

(b) Notwithstanding anything to the contrary contained herein, the liability of the Management Company to the Staff and Services Provider hereunder is limited in recourse to the Portfolio, and if the proceeds of the Portfolio following the liquidation thereof are insufficient to meet the obligations of the Management Company hereunder in full, the Management Company shall have no further liability in respect of any such outstanding obligations, and such obligations and all claims of the Staff and Services Provider or any other Person against the Management Company hereunder shall thereupon extinguish and not thereafter revive. The Staff and Services Provider accepts that the obligations of the Management Company hereunder are the corporate obligations of the Management Company and are not the obligations of any employee, member, officer, director or administrator of the Management Company and no action may be taken against any such Person in relation to the obligations of the Management Company hereunder.

(c) Notwithstanding anything to the contrary contained herein, any Staff and Services Provider agrees not to institute against, or join any other Person in instituting against, the Management Company any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings, or other proceedings under United States federal or state bankruptcy laws, or similar laws until at least one year and one day (or, if longer, the then applicable preference period plus one day) after the payment in full all amounts payable in respect of any Indebtedness incurred to finance any portion of the Portfolio; *provided* that nothing in this provision shall preclude, or be deemed to stop, the Staff and Services Provider from taking any action prior to the expiration of the aforementioned one year and one day period (or, if longer, the applicable preference period then in effect plus one day) in (i) any case or proceeding voluntarily filed or commenced by the Management Company, or (ii) any involuntary insolvency proceeding filed or commenced against the Management Company by a Person other than the Staff and Services Provider.

(d) The Management Company hereby acknowledges and agrees that the Staff and Services Provider's obligations hereunder shall be solely the corporate obligations of the Staff and Services Provider, and are not the obligations of any employee, member, officer, director or administrator of the Staff and Services Provider and no action may be taken against any such Person in relation to the obligations of the Staff and Services Provider hereunder.

(e) The provisions of this Section 8.03 shall survive termination of this Agreement for any reason whatsoever.



Section 8.04 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. The Parties unconditionally and irrevocably consent to the exclusive jurisdiction of the courts located in the State of Texas and waive any objection with respect thereto, for the purpose of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

(b) The Parties irrevocably agree for the benefit of each other that the courts of the State of Texas and the United States District Court located in the Northern District of Texas in Dallas are to have exclusive jurisdiction to settle any disputes (whether contractual or non-contractual) which may arise out of or in connection with this Agreement and that accordingly any action arising out of or in connection therewith (together referred to as "Proceedings") may be brought in such courts. The Parties irrevocably submit to the jurisdiction of such courts and waive any objection which they may have now or hereafter to the laying of the venue of any Proceedings in any such court and any claim that any Proceedings have been brought in an inconvenient forum and further irrevocably agree that a judgment in any Proceedings brought in such courts shall be conclusive and binding upon the Parties and may be enforced in the courts of any other jurisdiction.

Section 8.05 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ITS ENTERING INTO THIS AGREEMENT.

Section 8.06 Severability. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties.

Section 8.07 No Waiver. The performance of any condition or obligation imposed upon any Party may be waived only upon the written consent of the Parties. Such waiver shall be limited to the terms thereof and shall not constitute a waiver of any other condition or obligation of the other Party. Any failure by any Party to enforce any provision shall not constitute a waiver of that or any other provision or this Agreement.

Section 8.08 Counterparts. This Agreement may be executed in any number of counterparts by facsimile or other written or electronic form of communication, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the Parties reflected hereon as the signatories.







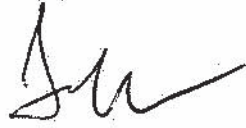




IN WITNESS WHEREOF, each Party has caused this Agreement to be executed as of the date hereof by its duly authorized representative.


**NEXPOINT ADVISORS, L.P.**

By: NexPoint Advisors GP, LLC, its  
General Partner

By:   
Name: Frank Waterhouse  
Title: Treasurer

**HIGHLAND CAPITAL  
MANAGEMENT, L.P.**

By: Strand Advisors, Inc., its General  
Partner

By:   
Name: Frank Waterhouse  
Title: Treasurer



Davor Rukavina, Esq.  
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*Counsel for Defendant NexPoint Advisors, L.P.*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:	§	Case No. 19-34054-SGJ-11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Chapter 11
	§	
Debtor.	§	
<hr/>		
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	Adversary No.: 21-03005-sgj
NEXPOINT ADVISORS, L.P., JAMES	§	
DONDERO, NANCY DONDERO, AND	§	
DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	

**DEFENDANT NEXPOINT ADVISORS, L.P.’S  
ANSWER TO AMENDED COMPLAINT**

Defendant NexPoint Advisors, L.P. (“NexPoint”), a defendant in the above-styled and numbered adversary proceeding (the “Adversary Proceeding”) filed by Highland Capital Management, L.P. (the “Plaintiff”), hereby files this Answer (the “Answer”) responding to the *Amended Complaint for (I) Breach of Contract and (II) Turnover of Property (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty* [Adv. **Dkt. 73**] (the “Amended Complaint”). Where an allegation in the Amended Complaint is not expressly admitted in this Answer, it is denied.

**Exhibit B**



### **PRELIMINARY STATEMENT**

1. The first sentence of paragraph 1 of the Amended Complaint sets forth the Plaintiff's objective in bringing the Amended Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Defendant NexPoint admits that NPA's First Amended Answer speaks for itself. To the extent paragraph 2 contradicts the First Amended Answer, it is denied.

3. Defendant NexPoint denies the allegations in paragraph 3 of the Amended Complaint.

4. Paragraph 4 of the Amended Complaint sets forth the Plaintiff's objective in bringing the Amended Complaint and does not require a response. To the extent it contains factual allegations, they are denied.

5. Paragraph 5 of the Amended Complaint contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

### **JURISDICTION AND VENUE**

6. Defendant NexPoint admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Court to adjudicate this dispute. Any allegations in paragraph 6 not expressly admitted are denied.

7. Defendant NexPoint admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in paragraph 7 not expressly admitted are denied.



8. Defendant NexPoint denies the allegations contained in paragraph 8 of the Amended Complaint. Defendant NexPoint does not consent to any trial before, or final order entered by, the Bankruptcy Court. Defendant NexPoint demands a trial by jury of all issues so triable.

9. Defendant NexPoint admits the allegations in paragraph 9 of the Amended Complaint.

### **THE PARTIES**

10. Defendant NexPoint admits the allegations in paragraph 10 of the Amended Complaint.

11. Defendant NexPoint admits the allegations in paragraph 11 of the Amended Complaint.

12. Defendant NexPoint admits the allegations in paragraph 12 of the Amended Complaint.

13. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13 of the Amended Complaint and therefore denies the same.

14. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14 of the Amended Complaint and therefore denies the same.

### **CASE BACKGROUND**

15. Defendant NexPoint admits the allegations in paragraph 15 of the Amended Complaint.

16. Defendant NexPoint admits the allegations in paragraph 16 of the Amended Complaint.



19. Defendant NexPoint admits the allegations in paragraph 19 of the Amended Complaint.

20. Defendant NexPoint admits that it has executed at least one promissory note under which the Debtor is a payee. Any allegations in paragraph 20 note expressly admitted are denied.

22. Defendant NexPoint denies paragraph 22 of the Complaint. The document speaks for itself and the quote set forth in paragraph 22 is not verbatim.

24. Defendant NexPoint denies paragraph 24 of the Complaint. The document speaks for itself and the quote set forth in paragraph 24 is not verbatim.

26. Defendant NexPoint admits that it did not make a payment under the Note on December 31, 2020. Defendant NexPoint denies that any payment was due under the Note on December 31, 2020. To the extent not expressly admitted, paragraph 26 of the Amended Complaint is denied.



29. Defendant NexPoint admits that Exhibit 3 to the Amended Complaint (the “Second Demand Letter”) is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 29 of the Amended Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, paragraph 29 of the Amended Complaint is denied.

31. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 of the Amended Complaint and therefore denies the same.

33. Defendant NexPoint admits that the Debtor filed the Original Complaint in this action on January 22, 2021, as alleged in the first sentence of paragraph 33 of the Amended

Complaint. Defendant NexPoint denies it is liable for the relief requested in the Original Complaint. To the extent not expressly admitted, paragraph 33 of the Amended Complaint is denied.

34. Defendant NexPoint admits the allegations in paragraph 34 of the Amended Complaint.

35. Defendant NexPoint admits the allegations in paragraph 35 of the Amended Complaint.

36. Defendant NexPoint admits that NexPoint's First Amended Answer speaks for itself. To the extent paragraph 36 contradicts the First Amended Answer, it is denied.

37. Defendant NexPoint admits that NexPoint's First Amended Answer speaks for itself. To the extent paragraph 37 contradicts the First Amended Answer, it is denied.

38. Paragraph 38 of the Amended Complaint asserts a legal conclusion to which no answer is required. To the extent of any factual allegation, Defendant NexPoint admits that Mr. Dondero controlled NPA and denies that he controlled the Debtor at the time of the Alleged Agreement.

39. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 39 of the Amended Complaint and therefore denies the same.

40. Defendant NexPoint denies the allegations in paragraph 40 of the Amended Complaint.

41. Defendant NexPoint admits that Exhibit 4 to the Amended Complaint is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 41 of the Amended Complaint asserts a legal conclusion, no response is required, and



it is denied. To the extent not expressly admitted, paragraph 41 of the Amended Complaint is denied.

42. Paragraph 42 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

43. Paragraph 43 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

**FIRST CLAIM FOR RELIEF  
(against NexPoint)  
(for Breach of Contract)**

44. Paragraph 44 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

45. Paragraph 45 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

46. Paragraph 46 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

47. Paragraph 47 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

48. Paragraph 48 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

**SECOND CLAIM FOR RELIEF  
(against NexPoint)  
(Turnover by NexPoint Pursuant to 11 U.S.C. § 542(b))**

49. Paragraph 49 of the Amended Complaint is a sentence of incorporation that does not require a response and is therefore denied. All prior responses are incorporated herein by reference.

50. Paragraph 50 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

51. Paragraph 51 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

52. Paragraph 52 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

53. Paragraph 53 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. Defendant NexPoint admits that the Plaintiff transmitted the Demand Letter and the Second Demand Letter, and those documents speak for themselves.

54. Paragraph 54 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

55. Paragraph 55 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

### **THIRD CLAIM FOR RELIEF**

**(Against NexPoint)**

**(Avoidance and Recovery of Actual Fraudulent Transfer under 11 U.S.C. §§ 548(a)(1)(A) and 550)**

56. Paragraph 56 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

57. Paragraph 57 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

58. Paragraph 58 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.



59. Paragraph 59 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

60. Paragraph 60 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

61. Paragraph 61 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

#### **FOURTH CLAIM FOR RELIEF**

**(Against NexPoint)**

**(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. § 544(b) and 550, and Tex. Bus. & C. Code § 24.005(a)(1))**

62. Paragraph 62 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

63. Paragraph 63 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

64. Paragraph 64 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

65. Paragraph 65 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

66. Paragraph 66 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

#### **FIFTH CLAIM FOR RELIEF**

**(Against Dugaboy Investment Trust and Nancy Dondero)**

**(For Declaratory Relief: -- 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7001)**

67. Paragraph 67 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

68. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

69. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

70. Paragraph 70 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

**SIXTH CLAIM FOR RELIEF**  
**(Against Dugaboy Investment Trust and Nancy Dondero)**  
**(Breach of Fiduciary Duty)**

71. Paragraph 71 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

72. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

73. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

74. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

**SEVENTH CLAIM FOR RELIEF**  
**(Against James Dondero and Nancy Dondero)**  
**(Aiding and Abetting a Breach of Fiduciary Duty)**

75. Paragraph 75 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

76. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

77. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.











1 WATERHOUSE - 10-19-21

2 IN THE UNITED STATES BANKRUPTCY COURT  
3 FOR THE NORTHERN DISTRICT OF TEXAS  
4 DALLAS DIVISION

5 -----  
6 IN RE:

7 Chapter 11

8 HIGHLAND CAPITAL  
9 MANAGEMENT, L.P.,

10 CASE NO.  
11 19-34054-SGI11

12 Debtor.

13 -----  
14 HIGHLAND CAPITAL MANAGEMENT, L.P.,

15 Plaintiff,

16 vs.

17 Adversary  
18 Proceeding No.  
19 21-03000-SGI

20 HIGHLAND CAPITAL MANAGEMENT  
21 FUND ADVISORS, L.P.; NEXPOINT  
22 ADVISORS, L.P.; HIGHLAND  
23 INCOME FUND; NEXPOINT  
24 STRATEGIC OPPORTUNITIES FUND;  
25 NEXPOINT CAPITAL, INC.; and  
CLO HOLDCO, LTD.,

Defendants.  
-----

REMOTE VIDEOTAPED DEPOSITION OF

FRANK WATERHOUSE

October 19, 2021

Reported by: Susan S. Klinger, RMR-CRR, CSR

Job No: 201195



1 WATERHOUSE - 10-19-21

2  
3  
4 October 19, 2021

5 9:30 a.m.  
6  
7  
8

9 Remote Deposition of FRANK WATERHOUSE,  
10 held before Susan S. Klinger, a Registered  
11 Merit Reporter and Certified Realtime Reporter  
12 of the State of Texas.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25





WATERHOUSE - 10-19-21

Attorneys for Jim Dondero, Nancy Dondero, HCRA,  
and HCMS:

Deborah Deitsch-Perez, Esq.

Michael Aigen, Esq.

STINSON

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Attorneys for Dugaboy Investment Trust:

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HELLER, DRAPER & HORN

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Attorneys for Marc Kirschner as the trustee for  
the litigation SunTrust:

Deborah Newman, Esq.

QUINN EMANUEL URQUHART & SULLIVAN

51 Madison Avenue

New York, New York 10010

Also Present:

Ms. La Asia Canty

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2 here, as we did yesterday. If anybody has  
3 a problem with what was just stated, can  
4 you state your objection now?

5 Okay. No response, so everybody  
6 accepts the stipulation and the instruction  
7 that was just given.

8 VIDEOGRAPHER: Thank you. This is  
9 the start of media labeled Number 1 of the  
10 video recorded deposition of Frank  
11 Waterhouse In Re: Highland Capital  
12 Management, L.P., in the United States  
13 Bankruptcy Court for the Northern District  
14 of Texas, Dallas Division, Case Number  
15 21-03000-SGI.

16 This deposition is being held via  
17 video conference with participants  
18 appearing remotely due to COVID-19  
19 restrictions on Tuesday, October 19th, 2021  
20 at approximately 9:32 a.m. My name is  
21 Scott Hatch, legal video specialist with  
22 TSG Reporting, Inc. headquartered at 228  
23 East 45th Street, New York, New York. The  
24 court reporter is Susan Klinger in  
25 association with TSG Reporting.

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2 Counsel, please introduce  
3 yourselves.

4 MR. MORRIS: John Morris, Pachulski  
5 Stang Ziehl & Jones for the reorganized  
6 Highland Capital Management, L.P., the  
7 plaintiff in these actions.

8 MS. DANDENEAU: Deborah Dandeneau  
9 from Baker McKenzie. My partner, Michelle  
10 Hartmann, is also in the room with me,  
11 representing Frank Waterhouse individually.

12 MS. DEITSCH-PEREZ: Deborah  
13 Deitsch-Perez from Stinson, LLP,  
14 representing Jim Dondero, Nancy Dondero,  
15 HCRA, and HCMS.

16 MR. HORN: Warren Horn with Heller,  
17 Draper & Horn in New Orleans representing  
18 Dugaboy Investment Trust.

19 MR. RUKAVINA: Davor Rukavina with  
20 Munsch Hardt Kopf & Harr in Dallas  
21 representing NexPoint Advisors, LP and  
22 Highland Capital Management Fund Advisors,  
23 L.P.

24 MR. AIGEN: Michael Aigen from  
25 Stinson, and I represent the same parties

1 WATERHOUSE - 10-19-21

2 as Deborah Deitsch-Perez.

3 MS. NEWMAN: This is Deborah Newman  
4 from Quinn Emanuel. We represent the  
5 litigation -- Marc Kirschner as the trustee  
6 for the litigation SunTrust.

7 MR. MORRIS: I think that is  
8 everybody.

9 VIDEOGRAPHER: Thank you. Will the  
10 court reporter please swear in the witness.

11 FRANK WATERHOUSE,  
12 having been first duly sworn, testified as  
13 follows:

14 EXAMINATION

15 BY MR. MORRIS:

16 Q. Please state your name for the  
17 record.

18 A. My name is Frank Waterhouse.

19 Q. Good morning, Mr. Waterhouse. I'm  
20 John Morris, as you know, from Pachulski Stang  
21 Ziehl & Jones. You understand that my firm and  
22 I represent Highland Capital Management, L.P.;  
23 is that right?

24 A. Yes.

25 Q. Okay. And do you understand that



1 WATERHOUSE - 10-19-21

2 we're here today for your deposition in your  
3 individual capacity?

4 A. Yes.

5 Q. Did you review and -- did you  
6 receive and review a subpoena that Highland  
7 Capital Management, L.P., served upon you?

8 A. Yes.

9 Q. You have been deposed before; right?

10 A. Yes.

11 Q. How many times have you been  
12 deposed?

13 A. About three or four times.

14 Q. Okay. And I defended you in one  
15 deposition; isn't that right?

16 A. That is correct.

17 Q. So the general ground rules for this  
18 deposition are largely the same as the  
19 depositions you have given before. And that is  
20 I will ask you a series of questions, and it is  
21 important that you allow me to finish my  
22 question before you begin your answer; is that  
23 fair?

24 A. Yes.

25 Q. And it is important that I allow you

1 WATERHOUSE - 10-19-21

2 to finish your answers before I begin a  
3 question, but if I fail to do that, will you  
4 let me know?

5 A. I can certainly do that.

6 Q. Okay. Do you understand that this  
7 deposition is being videotaped?

8 A. Yes.

9 Q. You understand that I may seek to  
10 use portions of the videotape in a court of  
11 law?

12 A. I did not know that, until you just  
13 said that.

14 Q. Okay. And you are aware of that now  
15 before the deposition begins substantively; is  
16 that right?

17 A. Yes.

18 Q. So unlike I think the other  
19 depositions that you have given, this one is  
20 being given remotely. So that presents some  
21 unique challenges, at least as compared to a  
22 deposition that is taken in-person.

23 From time to time we're going to put  
24 documents up on the screen, Mr. Waterhouse.  
25 And it is important that I give you the





1 WATERHOUSE - 10-19-21

2 Q. Okay. Are you currently employed?

3                    A.        Yes.

4 Q. By whom?

5           A.       The Skyview Group.

6 Q. When did you become employed by the  
7 Skyview Group?

8           A.     I believe March 1st of 2021.

9 Q. Do you have a title at Skyview?

10                    A.        Yes.

11 Q. What is your title?

12           A.       My title is chief financial officer.

13 Q. Do you report to anybody in your  
14 role as CFO?

15                   A.     I don't, no.

16 Q. No. Is there a president or a CEO  
17 of Skyview?

18                    A.        Yes.

19 Q. Who is that?

20           A.       That is Scott Ellington.

21 Q. But you don't report to  
22 Mr. Ellington; is that right?

23           A.     I don't think so.

24 Q. Does Skyview Group --

25 MS. DANDENEAU: Excuse me, we --

1 WATERHOUSE - 10-19-21

2 A. I -- I -- I might. I just -- I  
3 don't recall.

4 Q. Okay. Does Skyview Group provide  
5 any services to any entity directly or  
6 indirectly owned or controlled by Jim Dondero?

7 A. Yes.

8 Q. Can you name -- is that pursuant to  
9 written contracts?

10 A. Yes.

11 Q. And do you know how many contracts  
12 exist?

13 A. Approximately six or so.

14 Q. And is the Skyview Group made up of  
15 individuals who were formerly employees of  
16 Highland Capital Management, L.P.?

17 A. No.

18 Q. Do you know how many -- how many --  
19 how many employees does Skyview have?

20 A. Approximately 35.

21 Q. And can you tell me how many of  
22 those 35 are former officers, directors, or  
23 employees of Highland Capital Management, L.P.?

24 A. I don't know the exact number.

25 Q. Is it more than 20?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. Is it more than 30?

4 A. I don't know.

5 Q. Can you tell me what portion of  
6 Skyview -- Skyview's revenue is derived from  
7 entities that are directly or indirectly owned  
8 or controlled by Jim Dondero?

9 MS. DANDENEAU: Mr. Morris, I mean,  
10 you called Mr. Waterhouse here individually  
11 for purposes of his testimony in connection  
12 with the noticed litigation. I have given  
13 you some leeway to ask him some background  
14 information about Skyview Group, but this  
15 is not a substitute for a deposition in  
16 connection with any other pending disputes  
17 that exist. And -- and we agreed to accept  
18 the subpoena on the basis of he -- this is  
19 testimony that he is giving in connection  
20 with the noticed litigation.

21 I really think that you are now  
22 going a little bit far afield from the  
23 purpose of this deposition.

24 MR. MORRIS: Okay. It is -- I'm not  
25 intending to use these -- the answers to



1 WATERHOUSE - 10-19-21

2 these questions for any purpose other than  
3 this litigation. I think you understand  
4 fully why I'm asking the questions, and I  
5 just have a couple more, if you will bear  
6 with me.

7 MS. DANDENEAU: Okay.

8 MS. DEITSCH-PEREZ: Can we have an  
9 agreement that an objection by one is an  
10 objection for any other party here?

11 MR. MORRIS: Sure. I would -- I  
12 would encourage that, sure.

13 MS. DEITSCH-PEREZ: Thank you.

14 MR. MORRIS: It can't be sustained  
15 or overruled more than one time, so...

16 Q. Mr. Waterhouse, can you answer my  
17 question, please.

18 MS. DANDENEAU: Do you want to  
19 repeat it, Mr. Morris, for his benefit?

20 MR. MORRIS: Sure.

21 Q. Can you -- can you tell me the  
22 approximate portion of Skyview's revenue that  
23 is derived from entities that are directly or  
24 indirectly owned or controlled by Mr. Dondero?

25 A. I don't know the exact number.

1 WATERHOUSE - 10-19-21

2 Q. Is it more than 75 percent?

3 A. Yes.

4 Q. Is it more than 90 percent?

5 A. I don't know.

6 Q. Okay. Can I refer to Highland  
7 Capital Management, L.P., as Highland?

8 A. Yes.

9 Q. All right. And you previously  
10 served as Highland's CFO; correct?

11 A. Yes.

12 Q. When did you join Highland?

13 A. I don't recall the exact date.

14 Q. Can you tell me what year?

15 A. 2006.

16 Q. When did you -- in what year did you  
17 become Highland's CFO?

18 A. I don't recall the exact date.

19 Q. I'm not asking you for the exact  
20 date. I'm asking you if you recall the year in  
21 which you were appointed CFO.

22 A. I don't recall the exact year.

23 Q. Can you tell me which years it is  
24 possible that you were appointed to CFO of  
25 Highland?

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2 A. 2011 or 2012.

3 Q. Did you serve as Highland's CFO on a  
4 continuous basis from in or around 2011 or 2012  
5 until early 2021?

6 A. Yes.

7 Q. During that entire time you reported  
8 directly to Jim Dondero; correct?

9 A. I -- I don't know.

10 Q. Is there anybody else you reported  
11 to -- withdrawn.

12 Did you report to Mr. Dondero for  
13 some portion of the time that you served as  
14 CFO?

15 A. Yes.

16 Q. Is there a portion of time that you  
17 don't recall who you reported to?

18 A. Yes.

19 Q. What portion of time do you have in  
20 your mind when you can't recall who you  
21 reported to?

22 A. From the 2011 to -- for  
23 approximately a year or two.

24 Q. Okay. So is it fair to say that you  
25 reported to Mr. Dondero in your capacity as CFO



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2 from at least 2014 until the time you left  
3 Highland?

4 MS. DANDENEAU: Objection to form.

5 A. I don't want to speculate the exact  
6 or what year that changed or -- so I would like  
7 to stick with my testimony.

8 Q. Can you recall when you began  
9 reporting to Mr. Dondero?

10 A. I don't recall.

11 Q. Can you -- can you give me an  
12 estimate of what year you think you might have  
13 began reporting to Mr. Dondero?

14 A. I will go back to my prior  
15 testimony.

16 Q. Okay. There is no -- you have no  
17 ability to tell me when you began reporting to  
18 Mr. Dondero.

19 Do I have that right?

20 MS. DANDENEAU: Objection to form.

21 A. I don't recall.

22 Q. Okay. Do you recall who you might  
23 have reported to before you began reporting to  
24 Mr. Dondero?

25 A. Yes.

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2 Q. Who might you have reported to in  
3 your capacity as CFO before you started  
4 reporting to Mr. Dondero?

5 A. That would have been Patrick Boyce.

6 Q. Are you aware that Highland filed  
7 for bankruptcy on October 19th, 2019?

8 A. Yes.

9 Q. And we refer to that as the petition  
10 date?

11 A. Yes.

12 Q. Okay. Do you hold any professional  
13 licenses, sir?

14 A. Yes.

15 Q. Can you tell me what professional  
16 licenses you hold?

17 A. I'm a certified public accountant.

18 Q. Okay. Anything else?

19 A. No.

20 Q. Do you have any other professional  
21 licenses or certificates?

22 A. When you say "professional license,"  
23 that is not education?

24 Q. Tell me -- sure. Anything other  
25 than a driver's license.





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2 A. Yes.

3 Q. Were you ever employed by HCMFA?

4 A. Not that I recall.

5 Q. Were you ever -- did you ever hold  
6 the title of an officer or director of HCMFA?

7 A. Yes.

8 Q. What title did you hold?

9 A. Treasurer.

10 Q. When did you become the treasurer of  
11 HCMFA?

12 A. I don't recall.

13 Q. Can you tell me the year?

14 A. I don't -- I don't know the year.

15 Q. Can you approximate the year in  
16 which you became the treasurer of HCMFA?

17 A. I don't know.

18 Q. Can you tell me if it was before or  
19 after 2016?

20 A. I don't recall.

21 Q. Are you still the -- do you know if  
22 you're still the treasurer of HCMFA today?

23 A. Today, I am the acting treasurer for  
24 HCMFA.

25 Q. Is there a distinction between



1 WATERHOUSE - 10-19-21

2 the treasurer of CF- -- HCMFA for the first  
3 time?

4 A. I don't -- I mean, there would be  
5 some documents, some legal documents. I don't  
6 know where those are.

7 Q. How many times have you been  
8 appointed the treasurer of HCMFA?

9 A. I don't know.

10 Q. Was it more than once?

11 A. I don't know.

12 Q. Can you tell me any period of time  
13 since 2016 that you did not hold the title of  
14 treasurer of HCMFA?

15 MS. DANDENEAU: Objection to form.

16 A. I don't recall.

17 Q. What are your duties and  
18 responsibilities as the treasurer of HCMFA?

19 A. My duties are to do the best job  
20 that I can as the -- as an accountant and  
21 finance guy.

22 Q. What specific duties and  
23 responsibilities do you have as the treasurer  
24 of HCMFA?

25 A. My duties are to do the best job



1 WATERHOUSE - 10-19-21

2 that I can as the accounting and finance person  
3 for HCMFA.

4 Q. As the accounting and finance person  
5 for HCMFA, do you have any particular areas of  
6 responsibility?

7 A. Yeah, it is to manage the accounting  
8 and finance function for HCMFA.

9 Q. Would that include -- do you have  
10 responsibility for overseeing HCMFA's annual  
11 audit?

12 A. Can I please elaborate on my prior  
13 question?

14 Q. Of course. You -- you are giving  
15 answers. I'm asking questions.

16 A. Okay. Yes, so the -- it -- like I  
17 said, it is to manage the accounting finance  
18 aspect, but I am, as we discussed, the  
19 treasurer. That is -- being treasurer is what  
20 gives me that -- that management function.

21 Q. Does anybody report to you in your  
22 capacity as treasurer of HCMFA?

23 A. I don't believe so.

24 Q. Does HCMFA have a chief financial  
25 officer?

1 WATERHOUSE - 10-19-21

2 A. I don't -- I don't know.

3 Q. You don't know?

4 You're the treasurer of HCMFA but  
5 you don't know if HCMFA has a chief financial  
6 officer.

7 Do I have that right?

8 A. That's right.

9 Q. Okay. Have you heard of a company  
10 called NexPoint Advisors?

11 A. Yes.

12 Q. We will refer to that as NexPoint.  
13 Okay?

14 A. Okay.

15 Q. Were you ever employed by NexPoint?

16 A. I don't recall.

17 Q. Did you ever hold any title with  
18 respect to the entity known as NexPoint?

19 A. Yes.

20 Q. What titles have you held in  
21 relation to NexPoint?

22 A. Treasurer. I think it was only  
23 treasurer.

24 Q. Can you tell me the approximate year  
25 you became the treasurer of NexPoint?

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2 A. I don't know.

3 Q. Are you still the treasurer of  
4 NexPoint today?

5 A. I am the acting treasurer for  
6 NexPoint.

7 Q. When did your title change from  
8 treasurer to acting treasurer?

9 A. I don't know.

10 Q. Did your duties and responsibilities  
11 change at all when your title was changed from  
12 treasurer to acting treasurer?

13 A. I don't -- I don't believe so.

14 Q. Why did --

15 A. I still manage the finance and  
16 accounting function for NexPoint.

17 Q. Why did your title change from  
18 treasurer to acting treasurer?

19 A. I don't -- I'm using the term  
20 "acting treasurer" as I'm a Skyview employee.  
21 I don't -- I don't know -- again, I am a -- as  
22 I am the Skyview employee.

23 Q. Okay.

24 A. And we -- we provide officer  
25 services.





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2 Highland Capital Management Services, Inc.?

3 A. Yes.

4 Q. We will refer to that as HCMS.

5 Okay?

6 A. HCMS. Okay.

7 Q. Were you ever employed by HCMS?

8 A. No.

9 Q. Have you ever held any titles in  
10 relation to HCMF -- I apologize -- HCMS?

11 A. Yes.

12 Q. What titles have you held in  
13 relation to HCMS?

14 A. Treasurer and acting treasurer.

15 Q. When did you first become treasurer  
16 or acting treasurer of HCMS?

17 A. I don't recall the exact dates.

18 Q. Can you recall -- can you  
19 approximate the year that you became the  
20 treasurer of HCMS?

21 A. I don't -- I don't know.

22 Q. Are you still the treasurer of HCMS  
23 today?

24 A. I am the acting treasurer for HCMS.

25 Q. And are your duties and

1 WATERHOUSE - 10-19-21

2 responsibilities as the acting treasurer for  
3 HCMS and the acting treasurer for NexPoint the  
4 same as your duties and responsibilities in  
5 your role as the acting treasurer of HCMFA?

6 A. More or less.

7 Q. Have you ever heard of a company  
8 called HCRE Partners, LLC?

9 A. Yes.

10 Q. And do you understand that that  
11 entity is now known today as NexPoint Real  
12 Estate Partners?

13 A. I did not know that.

14 Q. All right. Can we refer to HCRE  
15 Partners as HCRE?

16 MS. DANDENEAU: Objection to form.

17 Did you mean NexPoint Real Estate  
18 Partners, Mr. Morris?

19 MR. MORRIS: No.

20 MS. DANDENEAU: Oh.

21 MR. MORRIS: He said he wasn't  
22 familiar that it was succeeded by that  
23 entity. So --

24 MS. DANDENEAU: Okay.

25 MR. MORRIS: -- let's go with what

1 WATERHOUSE - 10-19-21

2 the witness knows.

3 Q. You're familiar with an entity  
4 called HCRE Partners, LLC; correct?

5 A. Yes.

6 Q. Okay. So that is the entity that we  
7 will refer to as HCRE. If you're aware of any  
8 successor, that is great. If not, let's just  
9 define it as such.

10 Have you ever been employed by HCRE  
11 or any entity that you know to have succeeded  
12 HCRE?

13 A. No.

14 Q. Did you ever serve as an officer or  
15 director of HCRE or any successor?

16 A. Not that I recall.

17 Q. Okay. Can we refer to NexPoint and  
18 HCMFA as the advisors?

19 A. Yes.

20 Q. In general, the advisors provided  
21 investment advisory services to certain retail  
22 funds; correct?

23 A. Yes.

24 Q. And we will refer to the retail  
25 funds that are served by the advisors

1 WATERHOUSE - 10-19-21

2 collectively as the retail funds; is that okay?

3 A. Okay.

4 Q. Each of the retail funds is governed  
5 by a board; correct?

6 A. Yes.

7 Q. And do you know the people who serve  
8 on the boards of the retail funds?

9 MS. DANDENEAU: Objection to form.

10 A. I don't know all of them.

11 Q. Do you know whether the same people  
12 serve on the board of each of the retail funds  
13 as we've defined that term?

14 A. Which -- so when you say "retail  
15 funds" -- again, I want to be -- what retail  
16 funds are you referring to, because there are  
17 -- there are several distinctions?

18 What retail funds are you using when  
19 you refer to them?

20 Q. That is why -- that is why I tried  
21 to define the terms. So let me do it again.

22 Retail funds for the purposes of  
23 this deposition means any retail fund to which  
24 either of the advisors provides advisory  
25 services. Okay?



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2 A. Okay.

3 Q. Okay. So do you know whether the  
4 same people serve on the board of each of the  
5 retail funds?

6 A. I don't know.

7 Q. Were you ever employed by any of the  
8 retail funds?

9 A. No.

10 Q. No?

11 A. No.

12 Q. Okay. Do you have any title with  
13 respect to any of the retail funds?

14 A. Yes.

15 Q. What titles do you hold --  
16 withdrawn.

17 Do you have the same titles with  
18 respect to all of the retail funds or do  
19 they -- or just something else?

20 MS. DANDENEAU: Objection to form.

21 Q. Withdrawn.

22 Do you have the same title with  
23 respect to each of the retail funds?

24 A. No.

25 Q. Tell me which title you have with

1 WATERHOUSE - 10-19-21

2 respect to each retail fund.

3 Actually, let's do it a different  
4 way. I withdraw the question.

5 Can you give me one title you have  
6 in relation to any retail fund?

7 A. Yes.

8 Q. What title -- what title can you  
9 give me?

10 A. Principal executive officer.

11 Q. Do you serve as principal executive  
12 officer for each of the retail funds?

13 A. No.

14 Q. Can you identify for me the retail  
15 funds in which you serve as the principal  
16 executive officer?

17 A. Yes. Highland Funds 1, Highland  
18 Funds 2, Highland Income Fund, Highland Global  
19 Allocation Fund.

20 Q. I'm sorry, you said "Global  
21 Allocation Fund"?

22 A. Yes.

23 VIDEOGRAPHER: Excuse me,

24 Mr. Morris. This is the videographer. I'm  
25 concerned about the lighting in the

1 WATERHOUSE - 10-19-21

2 witness' camera.

3 Do you want to go off the record and  
4 make some adjustments?

5 MR. MORRIS: Sure, but just for this  
6 purpose. I don't want to take a break. We  
7 just started.

8 MS. DANDENEAU: Yeah, that is fine.  
9 That is fine. We're going to put you on  
10 mute.

11 MR. MORRIS: All right.

12 MS. DANDENEAU: I'm going to try to  
13 open up some of the shades.

14 VIDEOGRAPHER: We're going off the  
15 record at 10:08 a.m.

16 (Recess taken 10:08 a.m. to 10:11 a.m.)

17 VIDEOGRAPHER: We are back on the  
18 record at 10:11 a.m.

19 Q. Mr. Waterhouse, when did you become  
20 the principal executive officer of the four  
21 retail funds that you just identified?

22 A. I don't recall.

23 Q. Do you recall the approximate year  
24 that you became the principal executive officer  
25 of the four funds?

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2 A. 2021.

3 Q. Did you ever hold any title with  
4 respect to any of the four funds you have just  
5 identified other than principal executive  
6 officer?

7 A. I don't recall.

8 Q. Is it possible that you held a  
9 position or a title with the four funds you  
10 just identified prior to 2021?

11 A. Yes.

12 Q. But you don't recall if you did or  
13 not; do I have that right?

14 A. No. You -- I thought you asked, did  
15 I hold other titles.

16 Q. Did you hold any title at the four  
17 retail funds for which you now serve as  
18 principal executive officer at any time prior  
19 to 2021?

20 A. Yes.

21 Q. What titles did you hold?

22 A. I don't recall all the titles.

23 Q. Do you recall any of the titles?

24 A. Yes.

25 Q. What titles do you recall holding at



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2 those four retail funds before 2021?

3 A. Principal executive officer.

4 Q. Were you the principal executive  
5 officer of the four retail funds that you have  
6 identified?

7 A. Sorry, could you repeat the  
8 question?

9 Q. Were you the principal executive  
10 officer for each of the four retail funds that  
11 you have identified?

12 A. Yes.

13 Q. When did you become the principal  
14 executive -- withdrawn.

15 Can you give me the approximate year  
16 that you became the principal executive officer  
17 for each of the four retail funds you've  
18 identified?

19 A. I don't recall.

20 Q. What are your duties and  
21 responsibilities as the principal executive  
22 officer of these four retail funds?

23 A. It is to manage the finance and  
24 accounting positions.

25 Q. So at the same time you serve as the

1 WATERHOUSE - 10-19-21

2 treasurer of the advisors, you also serve as  
3 the principal executive officer of these four  
4 retail funds; correct?

5 A. Yes.

6 Q. Did you ever hold any title with  
7 respect to any other retail fund?

8 A. Not that I recall.

9 Q. During the period that you served as  
10 Highland's CFO, from time to time Highland  
11 loaned money to certain of its officers and  
12 employees; correct?

13 A. Yes.

14 Q. During the period that you served as  
15 Highland's CFO, from time to time Highland  
16 loaned money to certain --

17 A. Let me -- let me retract that,  
18 sorry, that -- you asked during the time I was  
19 CFO, Highland loaned moneys to employees. I  
20 don't -- I don't recall that during my tenure  
21 of CFO.

22 Q. You have no recollection during the  
23 time that you were the CFO of Highland of  
24 Highland ever loaning any money to any officer  
25 or director of Highland?

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2           A.       I don't recall during my tenure of  
3   Highland or my -- as CFO of Highland -- yeah,  
4   if there are any loans as CFO of Highland.

5 Q. I'm just talking about officers and  
6 employees right now. You have no recollection  
7 of Highland ever making a loan to any of its  
8 officers or employees during the time that you  
9 served as CFO. Do I have that right?

10 MS. DANDENEAU: Objection to form.

11           A.       So I thought you were saying  
12       officers and employees as CFO, right, so there  
13       were -- I mean, okay, yes.

14 Q. I would ask you to listen carefully  
15 to my question. If I -- if I'm not clear, let  
16 me know, but I'm really trying to be as clear  
17 as I can.

18           A.       I'm listening as carefully as I can,  
19       and you are asking very specific questions in a  
20       timeline.   And I'm trying to answer your  
21       questions as specifically as I can, and I  
22       apologize if -- if I'm going back.   I am -- you  
23       are asking very specific questions.   Thank you.

24 Q. During the period that you served as  
25 Highland's CFO, from time to time Highland





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who an affiliate was or is at the time those --

I didn't -- that wasn't my job to make a

determination of who an affiliate is.

Q. All right. So as the CFO of Highland, do you have any ability right now to tell me which companies that were directly or indirectly owned and/or controlled by Mr. Dondero in whole or in part received loans from Highland Capital Management, L.P.?

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Objection, form.

A. Yes.

Q. Okay. Identify every entity that you can think of that was directly or indirectly owned and/or controlled by Mr. Dondero in whole or in part that received a loan from Highland Capital Management, L.P.

MR. RUKAVINA: Objection, legal conclusion.

A. NexPoint Advisors, Highland Capital Management Fund Advisors, HCM Services, Dugaboy. Sorry, I don't think -- Dugaboy doesn't fit that definition. You said owned and controlled. I don't think that that



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2 Q. Okay. Can we refer to the four  
3 entities that you just named and Mr. Dondero as  
4 the affiliates?

5 A. So that would be Jim Dondero,  
6 NexPoint Advisors, Highland Capital Management  
7 Fund Advisors, and HCRE.

8 Q. And HCMS?

9 A. And HCMS, okay.

10 Q. And can we refer to the loans that  
11 were given to each of those affiliates as the  
12 affiliate loans?

13 A. Yes.

14 Q. And is it fair to say that each of  
15 the affiliates were the borrowers under the  
16 affiliate loans as we're defining the term?

17 MR. RUKAVINA: Objection, legal  
18 conclusion.

19 A. The borrowers are whoever were on  
20 the notes. I don't -- I don't know. I'm not  
21 the legal person.

22 Q. But you --

23 A. I don't know.

24 Q. You do know, as Highland's former  
25 CFO, that each of the affiliates that you have

1 WATERHOUSE - 10-19-21

2 identified tendered notes to Highland; correct?

3 MR. RUKAVINA: Hey, John, will you  
4 just give me a running objection to legal  
5 conclusion to HCM --

6 MR. MORRIS: No. No, if you want to  
7 object --

8 MR. RUKAVINA: I will object every  
9 time. Object to legal conclusion.

10 MR. MORRIS: That is fine.

11 A. Sorry, can you repeat the question?

12 Q. Are you aware that each of the --  
13 that each of the affiliates, as we have defined  
14 the term, gave to Highland a promissory note in  
15 exchange for the loans?

16 MR. RUKAVINA: Objection to the  
17 extent that calls for a legal conclusion.

18 A. I don't.

19 Q. No, you don't know that?

20 A. No, they didn't -- you said they  
21 exchanged a promissory note for a loan. I  
22 don't -- I don't understand that question, so I  
23 said no.

24 Q. At the time of the bankruptcy  
25 filing, did Highland have in its possession



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2 promissory notes that were signed by each of  
3 the affiliates?

4 A. Yes.

5 Q. To the best of your knowledge,  
6 during the time that you served as Highland's  
7 CFO, did Highland disclose to its outside  
8 auditors all of the loans that were made to  
9 affiliates?

10 MR. RUKAVINA: Objection, that calls  
11 for a legal conclusion.

12 MS. DEITSCH-PEREZ: I also couldn't  
13 hear you, John, because there was some  
14 garbling on -- on the -- on the call.

15 MR. MORRIS: Folks, I've got to tell  
16 you this is not going well, and I'm  
17 reserving my right --

18 MS. DANDENEAU: John, it was just  
19 the end of that question. It was just the  
20 end of that question. I couldn't hear it  
21 either. Sorry, if you could repeat it,  
22 please.

23 MR. MORRIS: That is less than an  
24 hour into this, but folks are trying to run  
25 out the clock, and so I'm just going to

1 WATERHOUSE - 10-19-21

2 state that now.

3 MS. DANDENEAU: You know, and,  
4 Mr. Morris, I really object to that. I  
5 mean --

6 MR. MORRIS: Okay.

7 MS. DANDENEAU: -- Mr. Waterhouse  
8 just told you he's trying to listen to your  
9 questions and answer them carefully, and  
10 you have no basis for saying that.

11 MR. MORRIS: Okay.

12 MS. DANDENEAU: This does not --  
13 this is not an experienced witness, so he's  
14 trying to do the best he can.

15 Q. Mr. Waterhouse, during the time that  
16 you served as Highland's CFO, did Highland  
17 disclose to its outside auditors all of the  
18 loans that it made to each of the affiliates  
19 that you have identified?

20 MR. RUKAVINA: Objection, legal  
21 conclusion.

22 A. Yes.

23 Q. To the best of your knowledge, while  
24 you were Highland's CFO, were all of the  
25 affiliate loans described in Highland's audited

1 WATERHOUSE - 10-19-21

2 financial statements?

3 MR. RUKAVINA: Objection, legal  
4 conclusion.

5 A. When an audit was performed, any  
6 loans that were made by Highland to the  
7 affiliates were disclosed to auditors.

8 Q. Are you aware of any loan that was  
9 made to any affiliate that was not disclosed to  
10 the auditors?

11 A. I'm not aware.

12 Q. To the best of your knowledge, did  
13 each of the affiliates who were --  
14 (inaudible) -- loaned from Highland execute a  
15 promissory note in connection with that loan?

16 MR. RUKAVINA: Objection, legal  
17 conclusion.

18 A. Sorry, you -- halfway through the  
19 question it got muffled.

20 Can you repeat that again?

21 Q. To the best of your knowledge, did  
22 every affiliate execute a promissory note in  
23 connection with each loan that it obtained from  
24 Highland?

25 MR. RUKAVINA: Objection, legal





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2 Q. Do you recall if Mr. Okada paid back  
3 all principal and interest due and owing under  
4 any loan he obtained from Highland?

5 MS. DEITSCH-PEREZ: Objection to  
6 form.

7 MS. DANDENEAU: Objection to form.

8 A. I don't recall.

9 Q. Do you recall whether -- during your  
10 time as CFO, whether Highland ever loaned money  
11 to Jim Dondero?

12 A. Yes.

13 Q. To the best of your knowledge, did  
14 Mr. Dondero sign and deliver to Highland a  
15 promissory note in connection with each loan  
16 that he obtained from Highland?

17 A. If you are referring to the  
18 promissory notes that, you know, part of  
19 Highland's records, yes.

20 Q. Okay. You're not aware of any loan  
21 that Mr. Dondero took from Highland that wasn't  
22 backed up by -- by a promissory note with a  
23 face -- with a principal amount equal to the  
24 amount of the loan; correct?

25 A. Am I aware that Jim Dondero took a

1 WATERHOUSE - 10-19-21

2 loan?

3 Q. Without giving a -- let me ask a  
4 better question. I'm sorry, Mr. Waterhouse.

5 Are you aware of any loan that  
6 Mr. Dondero obtained from Highland where he  
7 didn't give a promissory note in return?

8 A. I'm not aware.

9 Q. During the time that you served as  
10 Highland's CFO, did Highland ever forgive any  
11 loans, in whole or in part, that it made to  
12 Mr. Dondero?

13 A. Not that I'm aware.

14 Q. At the time that you served as  
15 Highland's CFO, did Highland ever forgive any  
16 loan, in whole or in part, that it made to any  
17 affiliate as we've defined the term today?

18 A. Not that I'm aware.

19 Q. During the time that you served as  
20 Highland's CFO, did Highland ever forgive, in  
21 whole or in part, any loan that it ever made to  
22 any officer or employee?

23 A. Highland forgave loans to officers  
24 and employees. It may not have been at the  
25 time when my title was CFO.

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2 Q. Okay. And so I appreciate the  
3 distinction.

4 Is it fair to say that, to the best  
5 of your knowledge, Highland did not forgive a  
6 loan that it made to an officer or employee  
7 after 2013?

8 MS. DANDENEAU: Objection to form.

9 A. I don't recall.

10 Q. To the best of your knowledge, did  
11 Highland disclose to its auditors every  
12 instance where it forgave, in whole or in part,  
13 a loan that it had made to one of its officers  
14 or employees?

15 A. No.

16 Q. Can you think of -- can you -- can  
17 you identify any loan to an officer or employee  
18 that was forgiven by Highland, in whole or in  
19 part, that was not disclosed to Highland's  
20 outside auditors?

21 A. Look, I don't recall all of the  
22 loans and the loan forgiveness. I just know as  
23 part of the audit process there is a  
24 materiality concept.

25 So if there were loans to employees

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that were of -- you know, that were deemed immaterial, those items may not have been disclosed by the team to the auditors.

Q. I appreciate that.

Do you have an understanding as to what the level of materiality was?

A. I don't recall.

Q. As the CFO of Highland, to the best of your knowledge, did Highland disclose to its outside auditors every loan that was forgiven, in whole or in part, that was material as that term was defined by the outside auditors?

A. Yes.

Q. And do you recall where -- do you recall where the definition of materiality can be found for -- for this particular purpose?

MS. DANDENEAU: Objection to form.

A. No. You -- I don't determine materiality.

Q. Okay. I'm just asking you if you can help me understand where it is, but I think we will find it in a few minutes.

You are aware that Highland has commenced lawsuits against each of the

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2 affiliates, as we've defined the term, to  
3 collect under certain promissory notes; is that  
4 right?

5 A. Yes.

6 Q. And are you familiar with the notes  
7 that are issue -- at issue in the lawsuits?

8 MS. DANDENEAU: Objection to form.

9 A. Generally familiar.

10 Q. Can we refer to the lawsuits that  
11 Highland has commenced against the affiliates  
12 collectively as the lawsuits?

13 A. Yes. And, again, the affiliates are  
14 NexPoint, HCMFA, HCMS, and HCRE.

15 Q. And Mr. Dondero?

16 A. Okay. See, that is a new -- and now  
17 Mr. Dondero is included in your affiliate  
18 definition.

19 Q. I just --

20 A. I thought affiliates -- I thought  
21 affiliates were just the four prior entities,  
22 so I just want to be clear.

23 Q. I appreciate that. So let's --  
24 let's keep them separate and let's refer to the  
25 four corporate entities as the affiliates, and



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2 Mr. Dondero we will call Mr. Dondero. Okay?

3 A. Okay. Thank you. As you can see,  
4 Mr. Morris, there is a lot of entities -- a lot  
5 here. I just want to be clear.

6 Q. Okay. Now, the affiliates of  
7 Mr. Dondero signed promissory notes that are  
8 not subject to the lawsuit.

9 Do you understand that?

10 MS. DANDENEAU: Objection to form.

11 A. The affiliates and Mr. Dondero  
12 signed --

13 Q. You know what? I will skip it.  
14 That is okay. Okay.

15 From time to time while you were  
16 Highland's CFO, payments were applied against  
17 principal and interests that were due under the  
18 notes that were tendered by the affiliates and  
19 Mr. Dondero; correct?

20 MR. RUKAVINA: Objection to the  
21 extent that calls for a legal conclusion.

22 A. Yes.

23 Q. Did Highland have a process where --  
24 whereby payments would be applied against  
25 principal and interest against the notes that

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2 were given by the affiliates and Mr. Dondero?

3 A. Yes.

4 Q. Can you describe the process for me?

5 A. The process, payment should be  
6 applied as laid out in the -- in the promissory  
7 note.

8 Q. From time to time were payments made  
9 that were not required under the promissory  
10 notes?

11 MS. DANDENEAU: Objection to form.

12 A. Yes.

13 Q. Who was responsible for deciding  
14 when and how much the payments would be made  
15 with respect to each of the notes that were  
16 issued by the affiliates and Mr. Dondero?

17 A. Who was responsible for deciding how  
18 much was paid prior to the due date?

19 Q. Yes.

20 A. I don't know.

21 Q. Did you approve of each payment that  
22 was made against principal and interest on the  
23 notes that were given by the affiliates and  
24 Mr. Dondero?

25 MS. DANDENEAU: Objection to form.



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2 interest due under one of the notes that was  
3 tendered by an affiliate or himself should not  
4 have been made?

5 A. Yes.

6 Q. Can you identify the payment for me?

7 A. It would be for -- for NexPoint  
8 Advisors.

9 Q. Okay. And when did Mr. Dondero tell  
10 you that a payment that you had initiated on  
11 behalf of NexPoint should not have been made?

12 A. I wasn't initiating payment. It was  
13 in the context of the -- I think you used this  
14 term, "the advisors," so NexPoint Advisors and  
15 Highland Capital Management Fund Advisors had  
16 overpaid on certain agreements with Highland  
17 Capital Management, L.P. And as a part of that  
18 process, the advisors -- what I was told at the  
19 time were in talks and negotiations and  
20 discussions with Highland Capital Management,  
21 L.P., on offsets in relation to those  
22 overpayments.

23 Q. When did this conversation take  
24 place?

25 MS. DANDENEAU: Objection to form.

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2 A. I don't recall specifically.

3 Q. Do you recall what year it was?

4 A. Yes.

5 Q. What year did the conversation with  
6 Mr. Dondero take place that you just described?

7 A. 2020.

8 Q. Okay. Do you remember if it was  
9 December 2020?

10 A. It -- it -- I don't -- I don't  
11 recall what month specifically, but it would  
12 have been November or December.

13 Q. And we're talking here about a  
14 payment of principal and/or interest that was  
15 due -- withdrawn.

16 We're talking here about a payment  
17 of principal and interest that was applied  
18 against NexPoint's note; correct?

19 MS. DANDENEAU: Objection to form.

20 A. I don't recall what that payment  
21 consisted of.

22 Q. Is it possible that the payment you  
23 have in mind related to the shared services  
24 agreement?

25 MS. DANDENEAU: Objection to form.



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2 A. No.

3 Q. Are you certain that the payment --  
4 that the payment that you have in mind related  
5 to the promissory note that NexPoint issued in  
6 favor of Highland?

7 MS. DANDENEAU: Objection to form.

8 A. Yes.

9 Q. Okay. Other than that one payment,  
10 can you identify any other instance where  
11 Mr. Dondero told you that a payment should not  
12 have been applied against principal and  
13 interest under any promissory note tendered by  
14 any affiliate or Mr. Dondero?

15 MS. DANDENEAU: Objection to form.

16 MS. DEITSCH-PEREZ: Objection to  
17 form.

18 A. Not that I recall.

19 Q. Thank you very much.

20 Do you know if Mr. Dondero approved  
21 in advance of each loan made to each affiliate  
22 and himself during the time that you were the  
23 CFO?

24 MS. DEITSCH-PEREZ: Object to the  
25 form.

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2 A. Yes, generally.

3 Q. Can you identify any loan that was  
4 ever made to an affiliate or to Mr. Dondero  
5 that Mr. Dondero did not approve of in advance?

6 A. Other than the ones that are in  
7 dispute, I'm not aware.

8 Q. Do you believe that Mr. Dondero did  
9 not approve of each of the loans that are in  
10 dispute in advance of the time that the loan  
11 was made?

12 MS. DANDENEAU: Objection to form.

13 A. Given what is in the dispute, you  
14 know, and -- and -- and the way things might --  
15 yeah, I mean...

16 Q. I am not asking about the dispute,  
17 and it was probably my mistake to follow you  
18 there.

19 Were you aware of every loan made by  
20 Highland to each of its affiliates and  
21 Mr. Dondero while you were the CFO at the time  
22 each loan was made?

23 A. Was I aware of every loan, yes.

24 Q. Okay. And if you put yourself back  
25 in time, do you recall that any of the loans



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2 that was made against principal and interest on  
3 any note tendered by any affiliate or  
4 Mr. Dondero that you didn't know about in  
5 advance?

6 A. I don't recall.

7 Q. Other than Mr. Dondero -- withdrawn.

8 Did anybody at Highland have the  
9 authority to make a payment against principal  
10 and interest due under a loan given to the  
11 affiliates and Mr. Dondero without your  
12 knowledge and approval?

13 MS. DANDENEAU: Objection to form.

14 A. Sorry, there was -- to make a  
15 payment on an affiliate loan, what you are  
16 saying would it require my knowledge and  
17 approval, yes.

18 Q. Okay. I appreciate that. Thank  
19 you.

20 Did anybody at Highland have the  
21 authority, to the best of your knowledge, to  
22 effectuate a loan to an affiliate without  
23 Mr. Dondero's prior knowledge and approval?

24 MS. DANDENEAU: Objection to form.

25 A. I can't speak for all, but

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2 generally, yes.

3 Q. Did you personally communicate with  
4 Mr. Dondero to let him know each time a payment  
5 of principal or interest was being made against  
6 any note that was tendered by an affiliate or  
7 Mr. Dondero to Highland?

8 A. I don't -- are you saying, did I let  
9 Mr. Dondero know if a payment was made on any  
10 affiliate or loan to Mr. Dondero? I mean,  
11 not -- not every -- no.

12 Q. Let me ask it this way: Did you  
13 have a practice of informing Mr. Dondero when  
14 payments were made against principal and  
15 interest on any note that was tendered by an  
16 affiliate or Mr. Dondero?

17 MS. DEITSCH-PEREZ: Objection to  
18 form.

19 MS. DANDENEAU: Objection to form.

20 A. No, I did not.

21 Q. Did Mr. Dondero ever tell you that a  
22 payment of principal or interest had been made  
23 against a note that was tendered by an  
24 affiliate or himself that he had been unaware  
25 of?



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2 A. Not that I recall.

3 Q. Are you aware that Mr. Dondero and  
4 the affiliates -- withdrawn.

5 Are you aware that Mr. Dondero  
6 NexPoint, HCRE, and HCMS all contend that they  
7 do not have to pay on any of the notes they  
8 issued because they are subject to an oral  
9 agreement between Mr. Dondero and Nancy  
10 Dondero, in her capacity as the trustee of the  
11 Dugaboy Investment Trust?

12 MS. DANDENEAU: Objection to form.

13 A. I didn't -- I didn't -- I didn't  
14 know that it was all notes.

15 Q. Okay. Are you -- did you ever learn  
16 that there was an oral agreement between Jim  
17 Dondero and Nancy Dondero pertaining to any  
18 notes issued by any affiliate or Mr. Dondero?

19 MS. DEITSCH-PEREZ: Object to the  
20 form.

21 A. Yes.

22 Q. Do you have any understanding as to  
23 the terms of that agreement?

24 A. Yes.

25 Q. What is your understanding of the

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2 terms of the agreement?

3 A. That there were certain milestones  
4 that had to be reached.

5 Q. Do you have any understanding of the  
6 terms of the agreement between Mr. Dondero and  
7 Nancy Dondero concerning any of the notes  
8 issued by the affiliates or Mr. Dondero other  
9 than that there have to be milestones reached?

10 MS. DEITSCH-PEREZ: Object to the  
11 form.

12 A. There are milestones, I found out  
13 yesterday, or there was some --

14 MS. DANDENEAU: Okay. I'm just  
15 going to object to the extent that you  
16 learned anything in conversations with  
17 counsel, please don't reveal -- that is  
18 privileged, and don't reveal any privileged  
19 communications.

20 THE WITNESS: Okay.

21 A. So I'm not aware of anything else.

22 Q. Do you know what the milestones  
23 were?

24 MS. DANDENEAU: Objection to form.

25 A. I don't.

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2 Q. Do you know anything about -- do you  
3 know what promissory notes the agreement  
4 covered?

5 A. I don't.

6 Q. Do you know if -- if Jim and Nancy  
7 Dondero entered into one agreement or more than  
8 one agreement?

9 MS. DEITSCH-PEREZ: Object to the  
10 form.

11 A. I don't know.

12 Q. Do you know if the agreement is in  
13 writing?

14 A. I don't know.

15 Q. How did you learn of the existence  
16 of the agreement?

17 MS. DANDENEAU: Objection to form.  
18 Again --

19 A. I don't -- I don't recall who told  
20 me.

21 Q. You have no recollection of who told  
22 you about this agreement between Jim and Nancy  
23 Dondero?

24 MS. DEITSCH-PEREZ: Object to the  
25 form.

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2 A. I don't recall.

3 Q. Do you recall how you learned of the  
4 agreement?

5 Was it in a meeting? Was it in a  
6 phone call? Was it in an email?

7 A. I don't recall.

8 Q. Do you recall when you learned of  
9 the agreement?

10 A. Not specifically.

11 Q. Do you recall what year you learned  
12 of the agreement?

13 A. In -- look, I mean, there are so  
14 many notes. I may be getting -- I believe it  
15 was 2020.

16 Q. All right. I'm not asking about  
17 notes, sir. I'm asking about the agreement  
18 that you testified you knew about between Jim  
19 and Don- -- Nancy Dondero. Okay.

20 Do you understand my question now?  
21 Should I ask my question again?

22 A. Yeah, sure. Go ahead.

23 Q. I'm going to use the word  
24 "agreement" to refer to the agreement that  
25 Mr. Dondero and Nancy Dondero entered into

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2 where you understood that certain milestones  
3 had to be reached. Okay?

4 A. Uh-huh.

5 MS. DANDENEAU: Objection.

6 MS. DEITSCH-PEREZ: Object to the  
7 form.

8 MR. MORRIS: Just defining a term,  
9 what is the objection.

10 MS. DEITSCH-PEREZ: The objection --

11 MR. MORRIS: I will move on. I will  
12 move on.

13 MS. DEITSCH-PEREZ: John --

14 Q. Sir, are you okay with that  
15 definition of agreement?

16 A. Okay.

17 Q. Okay. So you don't recall who --  
18 who informed you of the existence of the  
19 agreement; is that right?

20 A. I don't recall.

21 Q. You don't recall who told you the  
22 terms of the agreement.

23 Do I have that right?

24 A. Correct.

25 Q. And you don't recall if you learned



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2 about the agreement in a meeting, through an  
3 email, or through a phone call.

4 Do I have that right?

5 A. I don't recall.

6 Q. Can you tell me when you learned of  
7 the agreement?

8 A. I don't -- I don't -- I don't  
9 remember specifically.

10 Q. Can you tell me if you learned of  
11 the agreement before or after the petition  
12 date?

13 A. It would have been -- it would have  
14 been after.

15 Q. Can you tell me if you learned of  
16 the agreement before or after January 9th,  
17 2020?

18 A. It would have been after.

19 Q. Can you tell me if you learned of  
20 the agreement before or after you left Highland  
21 Capital Management in February of 2021?

22 A. I don't -- I don't -- I don't know.

23 Q. It is possible that you learned of  
24 it while you were a Highland employee.

25 Do I have that right?

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2 A. I don't remember the -- I mean, it  
3 was sometime in 2021. I don't remember when.

4 Q. All right. So to the best of your  
5 recollection, it was in 2021 but you don't  
6 recall if it was before or after you ceased to  
7 be a Highland employee.

8 Do I have that right?

9 A. Yeah, I mean, it was -- it was  
10 likely after I was -- after I left Highland  
11 because, if I put myself back into the last  
12 days of -- of 2021, it was -- you know, the  
13 communications with Mr. Dondero were -- were --  
14 were -- there weren't as many communications  
15 because of the circumstances.

16 Q. And so based on that you believe  
17 that it is most likely that you learned of this  
18 agreement sometime after you left Highland  
19 employment?

20 A. I wouldn't use the term "most  
21 likely." I don't recall specifically. I don't  
22 recall.

23 Q. Do you recall ever telling Jim Seery  
24 about this agreement?

25 A. No, I don't -- I didn't tell

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2 Jim Seery.

3 Q. Did you tell anybody at DSI about  
4 this agreement?

5 A. No.

6 Q. Did you tell any of Highland's  
7 independent directors about this agreement?

8 A. No.

9 Q. Did you tell anybody at Pachulski  
10 Stang Ziehl & Jones about this agreement?

11 A. No.

12 Q. Did you tell any employee of  
13 Highland about this agreement?

14 A. No.

15 MS. DANDENEAU: Mr. Morris, it has  
16 been an hour and a half. Is this a good  
17 time for a break?

18 MR. MORRIS: Sure.

19 Q. Mr. Waterhouse, I will just remind  
20 you that during the break please don't speak  
21 with anybody about the deposition, the  
22 substance of your testimony or anything else  
23 concerning the deposition. Okay?

24 A. Yes.

25 MR. MORRIS: So it is 11:02. We're

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2 at 11:02 your time. Let's come back, I  
3 guess, at 15 -- at 11:15 your time.

4 VIDEOGRAPHER: We're going off the  
5 record at 11:02 a.m.

6 (Recess taken 11:02 a.m. to 11:20 a.m.)

7 VIDEOGRAPHER: We are back on the  
8 record at 11:20 a.m.

9 Q. Mr. Waterhouse, did you speak with  
10 anybody during the break about this deposition?

11 A. No.

12 MS. DANDENEAU: Other than -- other  
13 than his counsel.

14 Q. Did you speak to your counsel about  
15 the substance of your deposition today?

16 A. No, I didn't bring it up.

17 Q. I didn't ask you if you brought it  
18 up. I asked you if you had any conversation  
19 with your lawyer about the substance of your  
20 deposition.

21 MS. DANDENEAU: Yes, he did.

22 Q. Can you tell me what the -- you  
23 discussed?

24 MS. DANDENEAU: No, I object to  
25 that. He's not going to answer. That is a

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2 privileged conversation.

3 MR. MORRIS: So I just want to make  
4 sure that I understand. During the break  
5 you spoke with your client about the  
6 substance of this deposition; is that  
7 right?

8 MS. DANDENEAU: Yes, John.

9 MR. MORRIS: And you refuse -- you  
10 refuse to let your client tell me what was  
11 discussed; is that right?

12 MS. DANDENEAU: That's correct.

13 MR. MORRIS: You know, I had given  
14 the instruction prior to the break not to  
15 speak with counsel. I would have  
16 appreciated --

17 MS. DANDENEAU: No, you didn't --  
18 actually, that is not true, Mr. Morris.  
19 You said not to speak with anyone. We  
20 never have interpreted that to mean  
21 conversations with counsel. That's never  
22 been -- I have never, ever heard that  
23 instruction.

24 MR. MORRIS: Okay. We will -- we  
25 will -- we will deal with it when and if we



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2 have to.

3 Q. Mr. Waterhouse, after learning about  
4 the agreement, did you ask anybody if the  
5 agreement was reflected in a writing?

6 MS. DANDENEAU: Objection to form.

7 A. No.

8 Q. Did you ask anybody if the terms of  
9 the agreement were memorialized anywhere?

10 MS. DANDENEAU: Objection to form.

11 MR. MORRIS: What is the --

12 A. No.

13 MS. DANDENEAU: Well, because you  
14 keep talking about this agreement and I --  
15 I -- I think, Mr. Morris, that is really  
16 not clear what you mean by "the agreement."  
17 And maybe you can just go back and restate  
18 what that is.

19 MR. MORRIS: Okay. Your client has  
20 agreed with me twice on the definition, but  
21 I will try one more time.

22 Q. Mr. Waterhouse, do you understand  
23 that when I use the term "agreement," I'm  
24 referring to the agreement between Jim and  
25 Nancy Dondero concerning certain promissory

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2 notes where you learned that one of the terms  
3 of the agreement was milestones reached?

4 A. Okay.

5 Q. And did you understand that that was  
6 the -- the agreement that we were referring to  
7 every time we used the word "agreement" in this  
8 deposition?

9 A. I don't know anything about this  
10 agreement. So, look, I do -- it -- I don't  
11 know whether --

12 Q. Let's -- let's try this again.

13 A. Yeah. Look, I don't know what this  
14 agreement relates.

15 MS. DEITSCH-PEREZ: John, John --

16 Q. Let me try --

17 MS. DEITSCH-PEREZ: John, please let  
18 the witness finish.

19 MR. MORRIS: Please stop. Please  
20 stop. Please stop talking.

21 MS. DEITSCH-PEREZ: No, you stop.  
22 Let the witness --

23 MR. MORRIS: Stop talking.

24 MS. DEITSCH-PEREZ: -- finish -- you  
25 interrupted him.

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2 MR. MORRIS: You know what, you  
3 guys, this is really wrong. It is really,  
4 really wrong. Okay?

5 I had the witness agree not once,  
6 but twice to the definition of agreement.  
7 Okay? I'm going to try and do it a third  
8 time.

9 MS. DANDENEAU: No, but, please,  
10 John, really --

11 MR. MORRIS: No, please stop  
12 talking. Please. It is my deposition.  
13 Object to questions.

14 MS. DANDENEAU: No, but also you  
15 instructed him that -- that if you were  
16 going -- if you were interrupting him, that  
17 he should remind you that you're  
18 interrupting him and -- and --

19 MR. MORRIS: Let him do that. Let  
20 him do that.

21 MS. DANDENEAU: Okay. Well, you --

22 MR. MORRIS: Please stop talking.

23 A. Okay. I don't know any of the  
24 details of these agreements. I don't know  
25 anything about them. I heard -- someone -- I

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don't know who, I don't know when, as you asked, sometime in '21, someone told me about this -- or I don't honestly know -- I don't even recall exactly how I was made aware of this, but I was. I don't know -- I don't know any of these details, and I'm getting -- again, there is, you know, I -- I -- I had a passing conversation with -- with Jim at some point on -- on some -- on the executive comp, and I'm getting confused of what is what, because again, I don't know any of these details.

Q. Okay. Let me try again, Mr. Waterhouse, and I apologize.

Are you aware of any agreement between Jim Dondero and Nancy Dondero concerning any promissory note that was given to Highland by any affiliate or Mr. Dondero?

MS. DEITSCH-PEREZ: Object to the form.

A. I've heard of an agreement. That is -- that is -- I mean, if you are using aware as heard, sure.

Q. And you understand that one of the terms of the agreement is that it was based on

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2 milestones that had to be reached; is that  
3 right?

4 MS. DANDENEAU: Objection to form.

5 A. That was one of the words that was  
6 used when I heard about it, yes.

7 Q. And when you heard about this  
8 agreement that had a term in it concerning  
9 milestones reached, did you ask the person who  
10 was telling you about the agreement whether or  
11 not it was in writing?

12 A. I did not.

13 Q. Did you ask any questions at all?

14 MS. DANDENEAU: Objection to form.

15 A. Not that I recall.

16 Q. But do you understand that going  
17 forward, we're going to refer to the agreement  
18 as the agreement that you just described that  
19 you were --

20 MS. DANDENEAU: Object to the form.

21 A. Yes.

22 Q. Okay. You don't have any personal  
23 knowledge concerning the terms of the  
24 agreement; correct?

25 MS. DEITSCH-PEREZ: Object to the



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2 form.

3 Q. You can answer.

4 A. I don't -- I heard about the  
5 agreement. I don't know anything -- I heard  
6 there was an agreement. That is -- again, as I  
7 testified before -- I said before, heard about  
8 it, don't know the details. I believe it was  
9 sometime this year.

10 Q. Do you have any personal knowledge  
11 about the terms of the agreement, sir?

12 MS. DANDENEAU: Objection to form.

13 A. Other than what I have previously  
14 discussed, I don't -- I don't know.

15 Q. Did -- did Mr. Dondero tell you  
16 about the existence of the agreement?

17 A. I don't recall.

18 Q. Do you recall the source of your  
19 information when you learned about the  
20 agreement?

21 A. No, I don't -- I don't recall. I  
22 don't remember. I just -- I heard about it  
23 generally. I don't remember -- I don't  
24 remember who, how, if, how. I don't remember.

25 Q. You know, Mr. Waterhouse, I just



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2 Q. Okay. Well, I hope that you  
3 appreciate what I'm saying here,  
4 Mr. Waterhouse.

5 MS. DANDENEAU: All right. Let's go  
6 ahead and ask questions, and again, you're  
7 entitled to probe his -- his knowledge  
8 of -- whatever knowledge he has about  
9 this -- this agreement and --

10 MR. MORRIS: That is what I'm doing.

11 MS. DANDENEAU: -- he will answer  
12 the questions to the best that he can.

13 MR. MORRIS: That is what I'm doing.

14 Q. Mr. Waterhouse, I take it you do not  
15 know which promissory notes issued by which  
16 affiliates or Mr. Dondero are the subject of  
17 this agreement; do I have that right?

18 A. Yes, I don't -- I don't know.

19 Q. Do you know of any way to determine  
20 which promissory notes issued by the affiliates  
21 and Mr. Dondero are the subject of this  
22 agreement other than asking Jim or Nancy  
23 Dondero?

24 MS. DANDENEAU: Objection to form.

25 A. I don't know.

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2 Q. Did you ever make --

3 A. I don't know anything about these  
4 agreements.

5 Q. Did you ever make any effort to  
6 determine which promissory notes are subject to  
7 this agreement?

8 A. No.

9 Q. Did you ever ask anybody which  
10 promissory notes are subject to this agreement?

11 A. No.

12 Q. Do you know if there is a list  
13 anywhere of the promissory notes that are  
14 subject to this agreement?

15 A. I'm not aware.

16 Q. Have you ever seen the terms of the  
17 agreement written down anywhere?

18 A. No.

19 Q. Have you ever asked anybody whether  
20 the terms of the agreement were written down  
21 anywhere?

22 A. I have not.

23 Q. Did learning about the agreement  
24 cause you to do anything in response?

25 MS. DANDENEAU: Objection to form.

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2 A. No.

3 Q. Did anybody ever describe to you the  
4 nature of the milestones that you referred to  
5 earlier?

6 A. No, I don't -- I don't have any  
7 details of this.

8 Q. That is fine.

9 PricewaterhouseCoopers served as  
10 Highland's outside auditors prior to the  
11 petition date; correct?

12 A. Yes.

13 Q. You refer to PricewaterhouseCoopers  
14 as PwC?

15 A. Yes.

16 Q. PricewaterhouseCoopers audited  
17 Highland's financial statements on an annual  
18 basis; correct?

19 A. During my -- during my time as -- as  
20 CFO, yes, PricewaterhouseCoopers was the  
21 auditor.

22 Q. Do you know why Highland had its  
23 annual financial statements audited each year?

24 A. Generally.

25 Q. Tell me your general understanding



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2 as to the reason why Highland had its annual  
3 financial statements audited each year.

4 A. From -- from time to time, they were  
5 used -- or asked for, as part of diligence or  
6 transactions or -- or things of that nature.

7 Q. And were they given to third parties  
8 for purposes of diligence or transactions from  
9 time to time?

10 A. As far as I'm aware, yes.

11 Q. And was it your understanding as the  
12 CFO that the third parties who received the  
13 financial statements in diligence or  
14 transactions was going to rely on those?

15 MS. DANDENEAU: Objection to form.

16 A. I don't know -- I don't know gen --  
17 I don't know specifically what they were going  
18 to rely on. You know, we would get requests  
19 for audited financial statements. I don't know  
20 what they were relying on.

21 Q. And --

22 A. You would have to ask them.

23 Q. Did you personally play a role in  
24 PwC's annual audit and the conduct of the  
25 audit?

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2 MS. DANDENEAU: Objection to form.

3 A. During my tenure as CFO, I played a  
4 very minimal role.

5 Q. What was the minimal role that you  
6 played?

7 A. You know, again, it was -- it was to  
8 check in with the team, to make sure that, you  
9 know, audit -- the deadlines were being hit,  
10 information was being presented to the auditors  
11 in a -- in a timely fashion, but, you know,  
12 other than that, it was a very capable team  
13 that are still current employees of Highland  
14 and, you know, they -- they conducted 99  
15 percent of -- look, I don't want to give  
16 percentages. I mean, this is -- but I -- I --  
17 I played a minimal role towards the end.

18 Before during my earlier years as  
19 CFO, I did more, and then as time went on, I  
20 did less in it.

21 Q. Okay. Was there a person at  
22 Highland who was responsible for overseeing  
23 Highland's participation in PwC's audit during  
24 the time that you were the CFO?

25 A. Yeah. I mean, there was -- there

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was a -- there was a point -- it varies. It varies by year, in function, in time and, you know, depending on the request, but yes, I mean, there is -- there is -- there is generally a point person of communication.

Q. And who was the point person from 2016 until the time you left Highland?

A. I don't -- I don't know specifically, but it would have been, you know -- you know, someone on the corporate accounting team.

Q. And was there a head of the corporate accounting team?

A. Yes, so -- yes.

Q. Who was the head of corporate accounting for the five years prior to the time you left Highland?

A. I don't -- if you're asking from 2016 on, I don't -- it was Dave Klos, but, again, there was -- there was changes to the team and the reporting structure. I don't remember exactly when that happened during -- you know, over the last -- since 2016.

Q. Did the folks who participated and

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2 ran the audit all report to you, directly or  
3 indirectly?

4 A. Yes.

5 Q. And did you have any responsibility  
6 for making sure that the audit report was  
7 accurate before it was finalized?

8 A. Yeah. I mean, you know, that --  
9 that is -- my responsibility to the auditors  
10 was -- again, is -- and the CFO is to -- we are  
11 providing accurate financial statements; right?

12 And -- and -- and as part of any  
13 audit, we disclose all relevant information as  
14 part of any audit.

15 Q. Okay. And as the CFO, did you take  
16 steps to make sure that the audit report was  
17 accurate?

18 A. I mean, I would say in a general  
19 sense, yes. But, again, I mean, I had a  
20 very -- I had a very capable and competent  
21 team. I wasn't managing them.

22 You know, part of what I do is I let  
23 the team -- I want managers to grow. I want  
24 managers to have rope. And that is -- you  
25 know, I'm not a stand-behind-you type of guy.

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If you -- if you talk to my team members, I'm not micromanaging people. I want people to learn and grow in their function so they can go on and do bigger and better things with their careers.

And so, yes, generally I was responsible for it, but I wanted the team to learn and grow and be responsible for the bulk of the audit.

Q. Did you personally review each audit report before it was finalized to satisfy yourself that it was accurate?

A. I don't -- I don't recall, you know, for every single -- we're talking 2016, there would have been three years, 2016 to '17, '18. I don't -- we're -- we're going back five years-plus. I don't -- you know, I don't recall.

Q. Did you have a practice that you employed to make sure that you were satisfied that Highland's audit reports were true and accurate to the best of your knowledge?

A. I mean, our -- the practice was set up with our -- the -- the practice to put

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2 together accurate audited or accurate financial  
3 statements is to your control environment.

4 So, you know, the -- so the practice  
5 was to maintain a stable control environment  
6 which then the output is -- is accurate  
7 financial statements.

8 So -- so, you know, if I was  
9 comfortable that the control environment was  
10 operating, then, you know, that would dictate  
11 how I would -- you know, what I might or might  
12 not do in a given year.

13 Q. Okay. Do you recall ever being  
14 uncomfortable with the control environment  
15 during the period that you served as CFO?

16 A. Yeah. I mean, look, yes, there are  
17 times -- you know, nothing is perfect. So  
18 there were -- there were times when, yes, you  
19 know -- there are times I learned I was  
20 uncomfortable with the control environment, and  
21 that is part of the management of the process  
22 and having, you know -- and -- and working  
23 through whatever obstacles present themselves.

24 Q. Okay. Were you ever uncomfortable  
25 with the control process as it related to



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2 reporting and disclosures of loans to  
3 affiliates and Mr. Dondero?

4 MS. DANDENEAU: Objection to form.

5 A. I don't -- I don't recall --

6 Q. So you don't recall --

7 A. -- the --

8 MS. DANDENEAU: Mr. Morris --

9 A. I don't recall being uncomfortable.

10 But, again, we're going back several years. I  
11 don't -- you know, the practice in an audit is  
12 to disclose all information to the auditors.

13 And I don't -- I don't recall.

14 Q. As part of the process of the audit,  
15 did you sign what is sometimes referred to as a  
16 management representation letter?

17 A. Yes.

18 MR. MORRIS: Can we put up on the  
19 screen a document that we have premarked as  
20 Exhibit 33.

21 (Exhibit 33 marked.)

22 MS. DANDENEAU: Mr. Morris, that is  
23 not in the binder; correct?

24 MR. MORRIS: Correct.

25 Q. So you will see, Mr. Waterhouse,

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2 this is a letter dated June 3rd. And if we  
3 could go to the signature page.

4 And do you see that you and  
5 Mr. Dondero signed this document?

6 A. Yes.

7 Q. That is your signature; right?

8 A. Yes.

9 MR. MORRIS: Okay. Can you go back  
10 to the top.

11 MS. DANDENEAU: Mr. Morris, can you  
12 have somebody post this in the chat so that  
13 we have can have a copy of this, please.

14 MR. MORRIS: Yeah, sure. Asia, can  
15 you do that, please.

16 Q. Okay. Do you see at the bottom of  
17 the second paragraph there is a reference to  
18 materiality?

19 A. Yes.

20 Q. Okay. It says, Materiality used for  
21 purposes of these representations is  
22 \$1.7 million.

23 Do you see that?

24 A. I do.

25 Q. And did PwC set that level of

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2 materiality?

3 A. Yes.

4 Q. And for purposes of the audit, did  
5 PwC set the level of materiality each year?

6 A. Yes.

7 Q. Did that number change over time?

8 A. I'm not aware of what materiality is  
9 every single year, so -- but, you know, this  
10 number would likely fluctuate.

11 Q. Okay. I'm going to go back to a  
12 question I asked you earlier today. And that  
13 is in connection -- this letter is issued in  
14 connection with the audit for the period ending  
15 12/31/2018; correct?

16 A. Yes.

17 Q. Okay. And is it fair to say that if  
18 any -- actually, withdrawn. I'm going to take  
19 it outside of this.

20 If Highland ever forgave the loan to  
21 any affiliate or any of its officers or  
22 employees, in whole or in part, to the best of  
23 your knowledge, would that forgiveness have  
24 been disclosed in the audited financial  
25 statements if it exceeded the level of

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materiality that PwC established?

MS. DANDENEAU: Objection to form.

A. So, again, during my tenure as CFO, and -- Highland -- it was -- it is required to disclose any affiliate loans that are in excess of materiality.

Now, the forgiveness of those loans may or may not -- I mean, since materiality fluctuates every year, a -- you know, if a loan was forgiven, it may or may not, you know -- and, look, I would want to consult the guidance around this.

It is not something we do -- you know, it is not -- you know, GAAP can be and disclosures can be very specialized so, again, we want to consult the guidance. But we would see if and what would need to be disclosed if it were deemed immaterial.

Q. Did you and Mr. Dondero sign management representation letters of this type in each year in which you served as Highland's CFO?

A. I -- I -- I will speak for myself. I signed them. There may have been others that

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2 signed as well. I don't -- I don't recall.

3 Q. But to the best of your knowledge,  
4 you, personally, signed a management  
5 representation letter in connection with  
6 Highland's audit each year that you served as  
7 the CFO; correct?

8 A. I would say generally speaking,  
9 Mr. Morris. I don't recall for every single  
10 year, you know, generally, but I would want to  
11 refer to all the rep letters and see who signed  
12 them.

13 Q. Do you recall Highland having its  
14 financial statements audited in any year during  
15 the period that you were a CFO where you didn't  
16 sign the management representation letter?

17 A. I don't recall. But, John, we're  
18 going back five, six, seven, eight, nine,  
19 decade. I don't -- I don't remember.

20 Q. I don't want to go back that many  
21 decades, but I'm just asking you if you recall  
22 that there was you didn't sign it?

23 A. I -- I -- I don't, but my memory  
24 is -- again, I -- I -- I can't tell you what I  
25 did in 2012. I mean, I think generally, yes,

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2 but I don't -- I don't know for sure, and I  
3 would want to rely on the document.

4 Q. Let me ask the question a little bit  
5 differently then.

6 Do you have any reason to believe  
7 that Highland had its annual financial audit  
8 and you did not sign a management  
9 representation letter in connection with that  
10 audit?

11 MS. DANDENEAU: Objection to form.

12 A. I don't believe it would, but,  
13 again, I would want to -- I don't recall and I  
14 would want to confirm it to -- to make, you  
15 know, an affirmative -- to give an affirmative  
16 answer.

17 Q. Do you know whether PwC required  
18 management to sign management representation  
19 letters?

20 MS. DANDENEAU: Objection to form.

21 A. Yes. I mean, it -- management  
22 representation letters are signed by  
23 management.

24 Q. Okay. And do you know -- do you  
25 have any understanding as to why PwC requires



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2 management to sign management representation  
3 letters?

4 MS. DEITSCH-PEREZ: Object to the  
5 form.

6 A. I don't know why PwC's -- what PwC's  
7 specific practice is. I know generally what  
8 management representation letters are.

9 Q. Okay. Do you personally -- I'm not  
10 asking about PwC. I'm asking for you -- I'm  
11 asking about you, do you have an understanding  
12 as to why the auditor asks for management  
13 representation letters?

14 A. Okay. So you're asking me in my  
15 personal capacity, yes, I have a general  
16 understanding of why.

17 Q. Can you give me the general  
18 understanding that you have as to why  
19 management representation letters are required?

20 A. They are -- they are required to --  
21 they are -- they are one of the items required  
22 in an audit to help verify completeness.

23 Q. Do you have any -- any other  
24 understanding as to why management  
25 representation letters are required?

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2 A. That is -- that is -- other than  
3 what I said, it is -- it is -- it is required  
4 so -- to ensure that the -- you know, there  
5 is -- there is completeness in what is being  
6 audited.

7 Q. Did you -- did you have a practice  
8 whereby you and Mr. Dondero conferred about the  
9 management representation letters before you  
10 signed them?

11 A. No.

12 Q. Did you have a practice --  
13 withdrawn.

14 Do you see just the next sentence  
15 after the materiality, there is a sentence that  
16 states: We confirm, to the best of our  
17 knowledge and belief, as of June 3rd, 2019, the  
18 date of your report, the following  
19 representations made to you during your audit.

20 Do you see that sentence?

21 A. Yes.

22 Q. Okay. Did you understand when you  
23 signed this letter that you were confirming the  
24 representations that followed?

25 A. When I signed this management

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2 letter -- representation letter, yes.

3 Q. Okay. Did you discuss this letter  
4 with Mr. Dondero before you signed it?

5 A. I don't recall.

6 Q. Do you recall if Mr. Dondero asked  
7 you any questions before he signed the letter?

8 A. I don't recall.

9 Q. Do you recall if you asked  
10 Mr. Dondero any questions before you signed  
11 this letter?

12 A. I don't recall.

13 Q. Is it fair to say that Mr. Dondero  
14 did not disclose to you the existence of the  
15 agreement that we have -- as we've defined that  
16 term prior to the time you signed this letter?

17 MS. DANDENEAU: Objection to form.

18 A. I don't think I understand the  
19 question. So, again, you are saying, did  
20 Mr. Dondero not disclose to me the existence of  
21 this letter?

22 Q. No, I apologize.

23 Did Mr. Dondero disclose to you the  
24 existence of the agreement prior to the time  
25 you signed this letter on June 3rd, 2019?

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2 A. The agreement -- the agreement that  
3 we talked about earlier?

4 Q. Correct.

5 A. Look, as I said earlier, the first  
6 time I heard of this agreement was sometime  
7 this year.

8 Q. Okay. Can we turn -- let's just  
9 look at a couple of items on the list. If we  
10 can go to page 33416. Do you see in Number 35  
11 it talks about the proper recording or  
12 disclosure in the financial statements of ND  
13 relationships and transactions with related  
14 parties.

15 Do you see that?

16 A. I do.

17 Q. As the CFO, do you have any  
18 understanding as to whether Dugaboy is a  
19 related party?

20 A. I don't recall.

21 Q. Do you know whether any of the  
22 affiliates are related parties?

23 A. If -- if it was NexPoint, HCMFA,  
24 HCMS, HCRE, yeah, if -- if that is the  
25 affiliate definition, and there. In ASC 850 --

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again, I mean, I haven't looked at ASC 850 in quite some time, but, you know, if -- if there is a control language, you know, ASC 850, would that -- that section in GAAP would -- would pick up and define what are related parties.

So, you know, like I said, if -- one of the four entities I just described, if -- if they are in that control definition of ASC 850, they would be picked up in 35D.

Q. Do you -- do you have any reason to believe that they would be picked up in that definition, based on your knowledge and experience?

A. I -- I believe that entities controlled under GAAP are -- are affiliates.

Q. Okay. Would Mr. Dondero also qualify as a related party for purposes of Section 35D, to the best of your knowledge?

A. Yeah, I don't -- I don't know. I would think -- I would have to read the code section to see if someone personally -- is it talking about related parties. So, look, if your own in control, yeah, I mean, I would have to read the section.

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Q. To the best of your knowledge, was the existence of the agreement ever disclosed to PwC?

A. I'm not -- I'm not aware.

Q. Do you recall if the agreement was ever disclosed in Highland's audited financial statements?

A. I don't -- I don't remember if it was in every Highland's audited financial statements during my tenure. We would have to read the financial statements to see what was disclosed, but I'm not -- I mean, as I sit here today, I'm not aware.

Q. That is all I'm asking for.

A. I'm not aware.

Q. Can we go to the next page, please, and look at 36. 36 says, we have disclosed to you the identity of the partnership's related party relationships and all the related party relationships and transactions of which we are aware.

Do you see that?

A. Yes.

Q. To the best of your knowledge, as of



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June 3rd, 2019, did Highland disclose to PwC the identity of the partnership's related parties and all the related party relationships and transactions of which it was aware?

A. I mean, I can speak for myself as signer of this representation letter. I disclosed what -- what, you know, what -- what -- what I knew. Sorry, look, yes, so I -- I disclosed what I knew.

Q. Okay. Can we go to page 419. Do you see at the end there is a reference to events that occurred since the end of the fiscal year and the date of the letter?

A. Yes.

Q. And were you aware of that -- of that provision of the management representation letter before you signed the document?

A. Yes.

Q. Do you have an understanding as to why PwC asked for that confirmation of that particular part of the management representation letter?

A. It is -- it is -- it is just -- it is a typical audit request.

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Q. And do you understand -- do you have an understanding that PwC wanted to know that as of the date of the audit whether any material changes had occurred since the end of the fiscal year, using the definition of materiality that is in this particular management representation letter?

A. It -- it is -- it is -- it is a -- it is as described. It is just a poorly worded question, so it is hard for me to say yes.

Q. If I asked you this, I apologize, but did you ever learn when the agreement was entered into?

A. I don't -- I don't -- like I said before, I don't know or have any details of the agreement.

Q. Okay. Did you ever ask anybody when the agreement was entered into?

A. I did not.

Q. Let's look at the audited financial statements. We will put up on the screen a document that has been premarked as Exhibit 34.

(Exhibit 34 marked.)

MS. DANDENEAU: And again, if Ms. La

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2 Canty could please put that in the chat  
3 room, that would be great.

4 MR. MORRIS: I will assure you we  
5 will put every document in the chat room.

6 Q. Now, I'm just going to ask you  
7 questions that are related to the provisions of  
8 this report that concern the affiliate loans,  
9 but again, Mr. Waterhouse, if there is any part  
10 of the document that you need to see or that  
11 you think you might need to see in order to  
12 refresh your recollection to answer any of my  
13 questions, will you let me know that?

14 A. Yes.

15 Q. Because this is a pretty lengthy  
16 document, but do you see that the cover page  
17 here is the Highland consolidated financial  
18 statements for the period ending December 31st,  
19 2018?

20 A. Yes.

21 Q. If we can go to -- I think it is the  
22 next one, looking for PwC's signature line.

23 MS. CANTY: I'm sorry, John, did you  
24 say something?

25 MR. MORRIS: Yes, can we turn the

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2 page. I think it is 215. Yes, stop right  
3 there, just above -- I'm sorry, I want to  
4 see just the date of the report.

5 Q. Okay. Do you see at the bottom of  
6 that page there, Mr. Waterhouse,  
7 PricewaterhouseCoopers has signed this audit  
8 report?

9 A. Yes, I see their signature.

10 Q. Okay. And it is the dated same day  
11 as your management representation letter; is  
12 that right?

13 A. It is -- yes, it is the same day.

14 Q. Was that the practice to sign the  
15 management representation letter on the same  
16 day that the audit report was signed?

17 A. Yes, that is typical in every audit.

18 Q. Can we just scroll down to the  
19 balance sheet on the next page.

20 Do you see that there is a line  
21 there that says, Notes and Other Amounts Due  
22 from Affiliates?

23 A. Yes.

24 Q. Does that line, to the best of your  
25 knowledge, include the amounts that were due

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2 under the affiliate under the notes signed by  
3 the affiliates and Mr. Dondero?

4 MR. RUKAVINA: Objection to the  
5 extent that calls for a legal conclusion.

6 A. I mean, I would want to see the  
7 detail and the build to this \$173,398,000, but,  
8 yes, I mean, if -- if -- given what we  
9 discussed before, you know, it -- it should  
10 capture that.

11 Q. And -- and while you were the CFO of  
12 Highland, were all notes held by Highland that  
13 were issued by an affiliate or Mr. Dondero  
14 carried as assets on Highland's balance sheets?

15 MS. DANDENEAU: Objection to form.

16 MS. DEITSCH-PEREZ: Object to form.

17 A. I don't -- I don't know how else  
18 they would be carried.

19 Q. Okay. Can you think of any -- are  
20 you aware of any promissory note issued by an  
21 affiliate or Mr. Dondero that was not carried  
22 on Highland's audited financial balance sheets?

23 A. I'm -- I'm -- I'm not aware.

24 Q. Okay. Are you aware of any category  
25 of asset on Highland's balance sheet in which

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any of the promissory notes issued by an  
affiliate or Mr. Dondero would have been  
included?

MS. DANDENEAU: Objection to form.

A. Sorry, am I aware of any asset of an  
affiliate being included --

Q. That -- let me -- let me try again.

Do you see there is a number of  
different assets that are described on this  
balance sheet?

A. Yes.

Q. One of the assets that is described  
is Notes and Other Amounts Due from Affiliates;  
right?

A. Yes.

Q. And it is reasonable to conclude  
that the notes from the affiliates and  
Mr. Dondero are included in that line item;  
right?

A. Yes, based on this description.  
Again, I would want to see a build of this to  
100 percent confirm, but based on the  
description, the asset description, it is -- it  
is likely.



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2 Now, does that mean absolute? I  
3 don't know.

4 Q. Do you have any reason to believe  
5 that the promissory notes would have been  
6 carried on the balance sheet in a category  
7 other than Notes and Other Amounts Due from  
8 Affiliates?

9 A. If they were deemed -- no. If they  
10 were deemed an affiliate, you know, under GAAP,  
11 they should be carried in that line.  
12 Otherwise, it would go into another line.

13 Q. Okay. And do you see the total  
14 asset base as of December 31st, 2018, was  
15 approximately \$1.04 billion?

16 A. Yes.

17 Q. Is my math correct that the Notes  
18 and Other Amounts Due from Affiliates  
19 constituted approximately 17 percent of  
20 Highland's assets as of the end of 2018?

21 A. Well, so how are you defining  
22 Highland?

23 Q. Highland Capital Management, L.P.,  
24 the entity that this audit is subject to -- or  
25 the subject of.

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A. On a consolidated or unconsolidated basis?

Q. I'm looking at the balance sheet.  
It is a consolidated balance sheet. Okay?

Does the Notes and Other Amounts Due from Affiliates constitute approximately 17 percent of the total assets of Highland Capital Management, L.P., on a consolidated basis?

MS. DANDENEAU: Objection to form.

A. I don't have a calculator in front of me but I will take your math, if you are taking the 173 divided by the billion.

Q. Okay.

A. If that is accurate, yes. But, again, on a consolidated basis.

Q. And on an unconsolidated basis the percentage would be higher; correct?

A. I -- no. I don't know.

Q. Well, okay. That is fair.

MR. MORRIS: Can we turn to  
241, please.

Q. Do you see that this is a section of the audit report that is entitled Notes and

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Other Amounts Due from Affiliates?

A. Sorry, I can't see the -- the --

Q. It is at the top.

A. Notes and Other Amounts Due from Affiliates, yes, I see that. I don't -- I don't have a page number, but I'm on a page that says at the top: Notes and Other Amounts Due from Affiliates.

Q. Okay. And that is the same title of the line item on the balance sheet that we just looked at; right? Notes and Other Amounts Due from Affiliates?

A. Yes.

Q. And is it your understanding, based on your experience and knowledge as the CFO, that this is the section of the narrative that ties into the line item that we just looked at?

A. Yes.

Q. And is this section of the audit report intended to describe and disclose all of the material facts concerning the Notes and Other Amounts Due from Affiliates?

MS. DANDENEAU: Objection, form.

A. This -- these notes -- these notes

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of the financial statements are -- the purpose is to disclose any material items in relation to that balance sheet line item.

Q. Okay. And all of the information, to the best of your knowledge, that is set forth in this section of the audit report was provided by Highland; correct?

A. Yes, it would have been provided by the corporate accounting team.

Q. Okay. And the corporate accounting team, did that team report to you in the organizational structure?

A. Yes.

Q. And did you have any concerns about the controls that were in place to make sure that the information provided with respect to Notes and Other Amounts Due from Affiliates was accurate and complete?

MS. DANDENEAU: Objection to form.

A. Not that I recall.

Q. Okay. Do you recall ever being concerned that any portion of the Notes and Other Amounts Due from Affiliates in any audit report was inaccurate, incomplete, or not

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2 accuracy of the section of the audit reports

3 called Notes and Other Amounts Due from

4 Affiliates; correct?

5 MS. DANDENEAU: Object to the form.

6 MS. DEITSCH-PEREZ: Objection to

7 form.

8 A. I don't recall having any

9 conversations. But, again, I mean, this is --

10 this is two years ago.

11 Q. I'm just asking for your

12 recollection, sir.

13 A. Yes.

14 Q. If you don't recall, this will --

15 A. Yeah.

16 Q. (Overspeak) -- if you don't

17 recall --

18 A. Yeah, I don't -- I don't recall.

19 Q. Do you know who was responsible for

20 drafting the audit report?

21 A. Are you asking the actual Highland

22 employee responsible? I mean, it was

23 Highland's responsibility, so, I mean, that

24 is --

25 Q. Right.

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A. -- Highland's responsibility.

Highland's responsibility.

Q. Who, at Highland, was responsible for drafting this section of the audit report?

A. I -- I don't know the answer to that. Again, there was a team who worked on this. And I don't know, you know, whether it was the staff or the manager.

Again, this is where I let the teams manage. And, you know, there may be a corporate accountant who worked on this. I just -- you know, I wasn't part of that process to give that person experience. I don't know.

Q. Do you recall having any communications with anybody at any time concerning this section of the report?

A. Yeah, I don't recall.

Q. Do you recall whether you ever told anybody at any time that any aspect of this section of the report was inaccurate or incomplete?

A. I don't recall.

Q. As you sit here today, do you have any reason to believe that this section of the

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2 audit report is incomplete or inaccurate in any  
3 way?

4 And I'm happy to give you a moment  
5 to -- to look at it, if you would like.

6 MS. DANDENEAU: Objection to form.

7 MS. DEITSCH-PEREZ: Same.

8 A. I mean, I would have to look at -- I  
9 would have to look at the bill to the note  
10 schedule to make sure I know you presented me  
11 with materiality, but again, there might be a  
12 note as of 12/31/18 that somehow was -- was  
13 under materiality not disclosed. I don't -- I  
14 don't know. I would need more information.

15 Q. Okay. But without more information,  
16 you have no reason to believe anything this  
17 section is inaccurate; correct?

18 MS. DANDENEAU: Objection to form.

19 A. I don't. I mean, you know, this was  
20 part of the audit.

21 Q. Thank you. Now, you will see if we  
22 could scroll just a little bit more that each  
23 of the first five paragraphs concerns  
24 specifically the four affiliates that we've  
25 been discussing and Mr. Dondero.

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value is the line item that you showed me earlier that is in Notes and Other Amounts Due from Affiliates.

Q. Okay. Is another way to say this is that the fair market value of the notes equals the principal amount and -- withdrawn.

Is the fair way to interpret this that the fair market value of the notes equals all remaining unpaid principal and interest due under the notes?

MS. DANDENEAU: Object to the form.

MS. DEITSCH-PEREZ: Objection, form.

A. I don't know the answer to that, because I don't recall where -- where any -- where -- in what line item was the interest component reported.

Q. All right. Well, if we look in this audit report, you will see in the middle of the first paragraph, for example, it states that as of December 31st, 2018, total interest and principal due on outstanding promissory notes was approximately \$5.3 million.

Do you see that?

A. I do.

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2 Q. Is that the carrying value or the  
3 fair value?

4 A. That would be the carrying value --

5 Q. And is the last --

6 A. -- in my opinion.

7 Q. Okay. And it is in your opinion as  
8 the chief financial officer of Highland during  
9 the period of time that you described; right?  
10 It is an educated opinion?

11 A. I'm reading this at face value. I'm  
12 taking that as that is carrying value.

13 Q. Okay. And does the last sentence  
14 say that the carrying value is roughly  
15 approximate to the fair market value?

16 MS. DANDENEAU: Objection to form.

17 MS. DEITSCH-PEREZ: Objection, form.

18 A. Again, this note to the financial  
19 statement is specific to notes and other  
20 amounts due from affiliates.

21 Q. Correct.

22 A. If the interest component is  
23 reported elsewhere on the balance sheet, you  
24 know, it -- it -- it could be off. Again, I  
25 don't have the detail. I don't know, but yes,



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2 look, I mean, if you -- I mean, if you are  
3 saying the 5.3 million is in the notes and  
4 other amounts due from affiliates, then the  
5 last statement is saying the fair value  
6 approximates 5.3 million. That is what that  
7 last sentence is saying.

8 Q. Do you see in the middle of the  
9 first paragraph -- not in the middle, the next  
10 to last sentence there is a statement that the  
11 partnership will not demand payment on amounts  
12 that exceed HCMFA's excess cash availability  
13 prior to May 31st, 2021.

14 Do you see that?

15 A. I do.

16 Q. Do you know when Highland agreed not  
17 to demand payment as described in that  
18 sentence?

19 A. I don't know specifically.

20 Q. Do you know why Highland agreed not  
21 to demand payment on HCMFA's notes until May  
22 2021?

23 A. Yes.

24 Q. Why was that decision made?

25 A. You know, well, it -- it -- that

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2 decision was made as to not put HCMFA into a  
3 position where it didn't have sufficient assets  
4 to pay for the demand note.

5 Q. And at the time the agreement was  
6 entered into, pursuant to which the partnership  
7 wouldn't demand payment, did HCMFA have  
8 insufficient assets to satisfy the notes if a  
9 demand had been made?

10 MS. DANDENEAU: Objection to form.

11 A. I don't have HCMFA's financial  
12 statements in front of me as of 12/31/18.

13 Q. Was there a concern that HCMFA would  
14 be unable to satisfy its demands under the  
15 notes if demand was made?

16 MS. DANDENEAU: Objection to form.

17 A. Well, there is -- I don't recall --  
18 I mean, there is something, right, in place to  
19 basically not demand payment until May 31, 2021  
20 as detailed here.

21 Q. And who made the decision to enter  
22 into -- who made the decision on behalf of  
23 Highland not to demand payment until May 31st,  
24 2021?

25 A. I'm trying to remember. I don't

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Q. And did you and Mr. Dondero discuss A's ability to satisfy the notes if a and was made at the time this agreement was red into?

MS. DANDENEAU: Objection to form.

A. I don't -- I don't -- I don't recall having a specific conversation, if I did, or -- David Klos.

Q. Okay. I'm just asking if you recall conversations that you had.

A. I don't recall.

Q. Okay. Do you know why Highland  
 ed the money to HCMFA that is the subject  
 ne notes described in this paragraph?

A. I don't remember specifically why  
million was loaned. I mean, I -- it would  
to be put in the context.

Q. Do you have any recollection at all  
as to why Highland ever loaned any money to  
A?

A. Yes.

MS. DANDENEAU: Objection to form.

Q. What do you remember about that?

A. There was a Highland Global

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2 describing occurred in May 2019; right?

3 MR. RUKAVINA: Objection to the  
4 extent that calls for a legal conclusion.

5 A. I don't recall specifically what  
6 amounts of money were moved when, for what  
7 purpose.

8 Q. Okay. Fair enough. Going to the  
9 next paragraph, do you recall that NexPoint  
10 Advisors had obtained a number of loans from  
11 Highland, and they rolled up those loans into  
12 one note in approximately 2017?

13 A. This is for NexPoint Advisors?

14 Q. Yes.

15 A. I -- I mean, I don't -- I don't  
16 recall the NexPoint Advisors loan being a  
17 roll-up loan, but --

18 Q. Do you know why?

19 A. But, look, if you have documents  
20 that show -- I mean, look, I just don't recall.

21 Q. Okay. That is fair. Do you know  
22 why -- do you have any recollection as to why  
23 Highland loaned money to NexPoint?

24 A. Yes.

25 Q. Why did High -- why do you recall --

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Do I have that right?

A. Yes.

Q. How about HCRE? Do you know why

HCRE borrowed money from Highland?

A. I don't remember specifically.

Q. Do you remember generally?

A. Generally, yeah -- I mean, yes.

Q. Can you tell me your general

recollection as to why Highland loaned money to HCRE?

A. For -- for -- for investment

purposes.

Q. So HCRE made the investment and it

obtained a loan, or loans, from Highland in

order to finance that investment or those

investments.

Do I have that right?

A. I mean, I -- you know, generally.

Q. Okay. How about Highland Management  
Services, Inc.?

Do you have any recollection as to

why HCMS borrowed money from Highland?

A. Generally.

Q. What is your general recollection as

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A. Yes, if they were deemed material or disclosable.

Do you see the next to the last  
y there? It says, Over the course of 2019  
ugh the report date, HCMFA issued  
issory notes to the partnership in the  
egate amount of \$7.4 million?

Q. And does that refresh your recollection that those are the notes that were related to the NAV error that you mentioned earlier?

Q. Yes.

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2 if -- you know, what -- if that 7.4 million was  
3 solely attributable to the NAV error.

4 Q. Okay. But there is no question that  
5 Highland told PricewaterhouseCoopers that over  
6 the course of 2019 HCMFA issued promissory  
7 notes to the partnership in the aggregate  
8 amount of \$7.4 million; correct?

9 A. In the course of the audit, we would  
10 have produced all promissory notes in our  
11 possession, including the ones that are  
12 detailed here.

13 Q. Do you recall that you signed the  
14 two promissory notes that are referenced in  
15 that provision?

16 MS. DANDENEAU: Objection to form.

17 A. I didn't recall initially but I've  
18 been reminded.

19 Q. Okay. And -- and do you recall that  
20 those notes are dated May 2nd and May 3rd,  
21 2019?

22 A. Yes.

23 Q. So that was just a month before the  
24 audit was completed; correct?

25 A. Yes. I think we had a June 3rd

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date, right, if -- if my memory serves me  
right.

Q. Yes, I will represent to you that your memory is accurate in that regard.

Did anybody ever instruct you as the CFO to correct this statement that we're looking at in subsequent events?

A. So let me understand. You're saying when I was CFO at Highland Capital did anyone ever ask me to correct the -- over the course of 2019 through the report date HCMFA issued promissory notes, this statement?

Q. Right.

A. Not that I'm aware.

Q. While you were the CFO of Highland, did anybody ever tell you that that sentence was wrong?

A. Not that I'm aware.

Q. Highland -- withdrawn.

HCMFA disclosed these notes in its own audited financial statements; right?

MR. RUKAVINA: Objection, form.

A. I assume that these would be material -- if these are material financial

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3           A.       I would imagine I would have been  
4   asked to.   I don't recall if I did.

8                      A.                      No.

12           A.       I mean, let me -- you know, there  
13   are different versions to management  
14   representation letters I will qualify.

21           In that context, yes. I mean, you  
22    know -- I mean, if I have been asked to sign  
23    and make those representations and those  
24    representations are invalid, yes, I would not,  
25    I mean, I -- I wouldn't sign that.

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2 Q. Okay. PricewaterhouseCoopers served  
3 as HCMFA's outside auditors as well; correct?

4 A. Yes.

5 Q. Do you see that this audit report is  
6 signed on June 3rd, 2019, just like the  
7 Highland audit report?

8 A. That is correct.

9 Q. And did the process of -- of  
10 preparing HCMFA's audit report, was that the  
11 same process that Highland followed when it did  
12 its audit report at this time?

13 A. I mean, it is a different entity.  
14 There are different assets. You know, it --  
15 it -- it is -- as you saw, Highland's  
16 financials are on a consolidated basis. This  
17 is different, so it is under the same control  
18 environment and team.

19 Q. Okay. I appreciate that. So the  
20 same control environment and team participated  
21 in the preparation of the audit for Highland  
22 and for HCMFA at around the same time; correct?

23 A. Yes.

24 MR. MORRIS: Can we go to page 17 of  
25 the report. I don't have the Bates number.

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Q. Okay. Do you see that just like Highland's audited financial report, HCMFA's audited financial report also has a section related to subsequent events?

A. Yes.

Q. And am I reading this correctly that just as Highland had done, HCMFA disclosed in its audited financial report a subsequent event that related to the issuance of promissory notes to Highland in the aggregate amount of \$7.4 million in 2019?

A. That is what I see in the report.

Q. And you were the treasurer of HCMFA  
at the time; right?

A. Yes, to the best of my knowledge.

Q. And did anybody ever tell you prior to the time of the issuance of this audit report that that sentence relating to HCMFA's 2019 notes was inaccurate or wrong in any way?

A. Not that I recall.

Q. As you sit here right now, has anybody ever told you that that sentence is inaccurate or wrong in any way?

A. Not that I recall.

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A. Yes, I am looking at it on the  
en.

A. I went through some of these  
ments with my counsel here yesterday

Q. Do you see Exhibit 1 is a million promissory note back in 2019?

Q. And this is a demand note, right, if you look at Paragraph 2?

Q. And this is a note where the maker is CMFA, and Highland is the payee; right?

MR. MORRIS: And if we can scroll  
can we just see Mr. Waterhouse's  
ture.

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2 Q. Is that your signature, sir?

3 A. Yes, it is.

4 Q. And did you sign this document on or  
5 around May 2nd, 2019?

6 A. I don't recall specifically signing  
7 this, but this is my signature.

8 Q. Okay. And do you recall that  
9 Highland transferred \$2.4 million to HCMFA at  
10 or around the time you signed this document?

11 A. I don't recall specifically. I  
12 would want to, as I sit here today, go back and  
13 confirm that, but again, presumably that --  
14 that -- that did happen.

15 Q. You wouldn't have signed this  
16 document if you didn't believe that HCMFA  
17 either received or was going to receive  
18 \$2.4 million from Highland; is that fair?

19 A. I mean, it -- if -- if -- if there  
20 wasn't a transfer of value, yeah, I mean, you  
21 know, I would have no reason to -- to sign a  
22 note.

23 Q. And -- and Highland wouldn't have  
24 given this note to PricewaterhouseCoopers if --  
25 withdrawn.



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2 HCMFA wouldn't have given this note  
3 to PricewaterhouseCoopers if it hadn't received  
4 the principal value of -- of the note in the  
5 form of a loan; correct?

6 MR. RUKAVINA: Objection, legal  
7 conclusion, speculation and form.

8 A. Again, we -- what we provided to PwC  
9 were, as part of the audit, any promissory  
10 notes executed and outstanding. You know, as a  
11 part of the audit, they, you know, they -- they  
12 have copies of all the bank statements,  
13 things -- things of that sort.

14 MR. MORRIS: Okay. Can we go to  
15 Exhibit 2.

16 (Exhibit 2 marked.)

17 Q. Do you see that this is a promissory  
18 note dated May 3rd, 2019 in the amount of  
19 \$5 million?

20 A. Yes.

21 Q. Do you believe this is also a demand  
22 note if you look at Paragraph 2?

23 A. Yes.

24 Q. And do you see that HCMFA is the  
25 maker, and Highland is the payee?

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2 A. Yes.

3 Q. And if we go to the bottom, can we  
4 just confirm that that is your signature?

5 A. Yes.

6 Q. And together these notes are the  
7 notes that are referred to both in Highland and  
8 HCMFA's audited financial reports in the  
9 subsequent event sections; correct?

10 MS. DANDENEAU: Objection to form.

11 A. They -- they -- they totaled  
12 \$7.4 million, so presumably, yes.

13 Q. Okay. And you were authorized to  
14 sign these two notes; correct?

15 MR. RUKAVINA: Objection, legal  
16 conclusion.

17 A. Yeah. I mean, I'm -- I was the  
18 officer of -- of HCMFA. You know, I -- I'm not  
19 the legal expert on -- on what that -- what  
20 that confers to me or what it doesn't. I mean,  
21 that is my signature on the notes.

22 Q. And you believed you were authorized  
23 to sign the notes; is that fair?

24 A. I signed a lot of documents in my  
25 capacity, just because it is operational in

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form.

A. You know, from -- from what I recall around these notes, you know, I don't recall specifically Mr. -- Mr. Dondero saying to -- to make this a loan.

So my conversation with Mr. Dondero around the culmination of the NAV error as related to TerreStar which was a -- a -- I think it was a year and a half process. I don't know, it was a multi-month process, very laborious, very difficult.

When we got to the end, I had a conversation with Mr. Dondero on where to, you know, basically get the funds to reimburse the fund, and I recall him saying, get the money from Highland.

Q. And so he told you to get the money from Highland; is that right?

A. That is what I recall -- in my conversation with him, that is -- that is what I can recall.

Q. Do you know who drafted these notes?

A. I don't.

Q. Did you ask somebody to draft the

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notes?

A. I didn't ask -- I don't specifically ask people to draft notes really. I mean, again, you know, the legal group at Highland is responsible and has always been responsible for drafting promissory notes.

Q. So based on your -- based on the practice, you believe that somebody from the Highland's legal department would have drafted these notes. Do I have that right?

MS. DEITSCH-PEREZ: Object to the form. John, I also asked you for the Word versions of these notes so we could look at the properties, and you have not provided them. Are you intending to?

MR. MORRIS: No.

Q. Can you answer my question, sir?

A. Again, I --

MS. DANDENEAU: Do you want him to  
get it?

A. Yeah, why don't you repeat it?

Q. Sure. Mr. Waterhouse, based on the practice that you have described in your understanding, do you believe that these notes

1 WATERHOUSE - 10-19-21

2 would have been drafted by somebody in the  
3 legal department?

4 MS. DEITSCH-PEREZ: Object to the  
5 form.

6 A. Yes.

7 Q. Okay. And do you know who would  
8 have instructed -- do you have any knowledge as  
9 to who would have instructed the legal  
10 department to draft these notes?

11 MS. DEITSCH-PEREZ: Object to the  
12 form.

13 A. It was whoever was working -- I  
14 mean, it was likely someone on the team. I  
15 mean, I don't remember exactly on every note or  
16 every document, but, again, a lot of these  
17 things of this nature -- they're operational in  
18 nature -- were handled by the team.

19 The team knows to -- I mean, we  
20 don't draft documents. We're not lawyers.  
21 We're not attorneys. It is not what I do or  
22 accountants do.

23 So they are always instructed to go  
24 and -- and go to the legal team to get  
25 documents like this drafted. Also, when you go

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2 to the legal team, the -- you know, we always  
3 loop in compliance. And compliance -- when you  
4 go to the legal team, compliance is part of  
5 legal team. They're made aware of -- of -- of  
6 these types of transactions.

7 Q. And do you believe that you had  
8 the -- withdrawn.

9 Did you ever tell Mr. Dondero --  
10 (inaudible) -- did you see those?

11 A. Sorry.

12 MS. DEITSCH-PEREZ: I did not hear  
13 the end of that question.

14 Q. Did you ever tell Mr. Dondero that  
15 you signed these two notes?

16 A. I don't recall ever -- no, I don't  
17 recall having a conversation with him.

18 Q. Did you ever discuss these two notes  
19 with him at any time?

20 A. The conversation, I recall, was what  
21 I described earlier. And that is the only time  
22 I recall ever discussing this.

23 Q. Okay. But the corporate accounting  
24 group had a copy of this -- of these two notes.  
25 And pursuant to the audit process, the



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2 outside counsel. I have no idea.

3 Q. Did you have any reason to believe  
4 you weren't authorized to sign this note,  
5 either of these two notes?

6 A. I think I have already answered that  
7 question.

8 Q. Okay. You didn't give these notes  
9 to PricewaterhouseCoopers; correct?

10 MS. DANDENEAU: Objection to form.

11 A. I don't recall giving these to  
12 PricewaterhouseCoopers.

13 Q. And in the practice that you have  
14 described, somebody in the corporate accounting  
15 group would have given these two notes to  
16 PricewaterhouseCoopers; correct?

17 MS. DANDENEAU: Objection to form.

18 A. I think I've answered that. I said  
19 either the corporate accounting team or maybe  
20 the legal team.

21 MR. MORRIS: Okay. Why don't we  
22 take our lunch break here.

23 VIDEOGRAPHER: We're going off the  
24 record at 1:04 p.m.

25 (Recess taken 1:04 p.m. to 1:49 p.m.)

1 WATERHOUSE - 10-19-21

2 VIDEOGRAPHER: We are back on the  
3 record at 1:49 p.m.

4 Q. Mr. Waterhouse, did you speak with  
5 anybody during the break about the substance of  
6 this deposition?

7 A. I spoke to -- to Deb and Michelle.

8 Q. About the substance of the  
9 deposition?

10 A. Yes.

11 Q. Can you tell me what you talked  
12 about?

13 MS. DANDENEAU: No. We object on  
14 the basis of privilege.

15 Q. Okay. You are going to follow your  
16 counsel's objection here?

17 A. Yes.

18 Q. Okay.

19 MR. MORRIS: Can we put up on the  
20 screen Exhibit 35.

21 (Exhibit 35 marked.)

22 Q. Are you able to see that document,  
23 sir?

24 A. Yes.

25 Q. Have you ever seen an incumbency

1 WATERHOUSE - 10-19-21

2 certificate before?

3 A. I have.

4 Q. Do you have a general understanding  
5 of what an incumbency certificate is?

6 A. I have a general understanding.

7 Q. What is your general understanding?

8 A. You know, those -- my general  
9 understanding is that the incumbency  
10 certificate basically lists folks that can --  
11 are like authorized signers.

12 Q. Okay. And do you see that this is  
13 an incumbency certificate for Highland Capital  
14 Management Fund Advisors, L.P.?

15 A. Yes.

16 Q. Okay. And if we could scroll down  
17 just a little bit, do you see that it's dated  
18 effective as of April 11th, 2019?

19 A. Yes, I see that.

20 Q. Okay. And is that your signature in  
21 the middle of the signature block?

22 A. Yes, it is.

23 Q. And by signing it, did you accept  
24 appointment as the treasurer of HCMFA effective  
25 as of April 11th, 2019?

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A. Again, I'm not the legal -- I don't know if this makes me the treasurer or the appointment. I don't know -- I don't know that, so I don't -- I don't know if that document -- again, I think -- again, I'm not the legal expert. I think isn't there -- aren't there other legal documents that detail who the officers are that could be incorporated or things like that? Again, I don't want to play armchair attorney here.

Q. I'm not asking you for a legal conclusion. I'm asking you for your knowledge and understanding. When you signed this document, did you understand that you were accepting an appointment as the treasurer of HCMFA?

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Objection, form.

A. Again, I don't think this -- that wasn't my understanding. I don't think this makes -- this document makes me the treasurer.

Q. What do you think this document -- why did you sign this document?

MS. DEITSCH-PEREZ: Objection to

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2 form.

3 MR. MORRIS: You're objecting to the  
4 form of the question when I asked him why  
5 did you sign the document? What is the  
6 basis for the objection?

7 MS. DEITSCH-PEREZ: Because, John, I  
8 think that it does call for a legal  
9 conclusion other than -- with him saying  
10 because somebody told me to sign this  
11 document. But if you want to go there,  
12 that is fine.

13 MR. MORRIS: Okay.

14 MS. DANDENEAU: I don't think --  
15 he's already said he's not a lawyer.

16 MR. MORRIS: I'll allow the witness  
17 to answer this question.

18 Q. Why did you sign this document, sir?

19 A. I mean, our -- our legal group would  
20 bring by these incumbency certificates from  
21 time to time. I have no idea why they're being  
22 updated, and I was asked to sign.

23 Q. Did you ask anybody, what is this  
24 document?

25 A. No.

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2 Q. Did anybody tell you why they needed  
3 you to sign the document?

4 A. Not that I can recall.

5 Q. You testified earlier that you  
6 understood that you served as the acting  
7 treasurer for HCMFA; correct?

8 A. Yes.

9 Q. How did you become the acting  
10 treasurer of HCMFA?

11 MS. DANDENEAU: Objection to form.

12 A. I don't -- I don't know the legal --  
13 I don't know the legal mechanic of how I became  
14 the acting treasurer.

15 Q. I'm not asking for the legal  
16 mechanic. I'm asking you as the person who  
17 is --

18 MS. DANDENEAU: John, you said --

19 MR. MORRIS: Stop.

20 MS. DANDENEAU: -- how did you  
21 become the treasurer. That is --

22 MR. MORRIS: Please stop.

23 MS. DANDENEAU: That is a legal  
24 question.

25 MR. MORRIS: I am not asking any



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legal questions, to be clear. I'm asking for this witness' understanding as to how he became the acting treasurer of HCMFA. If he doesn't know, he can say he doesn't know, but this legal stuff is nonsense, and I really object to it.

Q. Sir, I'm asking you a very simple question.

MS. DANDENEAU: Argumentative.

Q. You testified -- you testified that  
became the acting treasurer of HCM --  
A; correct?

A. Yes.

Q. How did that happen?

MS. DANDENEAU: Again, object to

MR. MORRIS: I can't wait to do this  
courtroom. Good God.

Q. Go ahead, sir.

A. I don't know the exact process of that happened.

Q. Do you have any idea whether signing document was part of the process?

MR. MORRIS: You know what --

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3 MR. MORRIS: -- withdrawn. You guys  
4 want to do this, I can't wait. I can't  
5 wait. This is the craziest stuff ever.

10 MR. MORRIS: Okay.

13 MR. MORRIS: Did anyone -- please  
14 stop talking.

21 MR. MORRIS: I can't -- I can't  
22 wait -- I can't wait to do this in a  
23 courtroom. I will just leave it at that.

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2 Q. Did anyone ever tell you, sir, that  
3 even though you were the acting treasurer of  
4 HCMFA, that you were not authorized to sign the  
5 two promissory notes that we looked at before  
6 lunch?

7 A. I'm not sure I understand the  
8 question. I wasn't -- I mean, I'm -- I'm the  
9 current acting treasurer.

10 Q. Did anybody ever tell you at any  
11 time that even though you were the acting  
12 treasurer of HCMFA, that you were not  
13 authorized to sign the two promissory notes  
14 that we looked at before lunch?

15 MS. DANDENEAU: Objection to form.

16 A. Not that I recall.

17 Q. Did anybody ever tell you at any  
18 time that you were not authorized to sign the  
19 two promissory notes that we looked at before  
20 lunch?

21 A. Not that I recall.

22 Q. Did anybody ever tell you at any  
23 time that you should not have signed the two  
24 promissory notes that we looked at before  
25 lunch?

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2 A. Not that I recall.

3 Q. Did you ever tell anybody at any  
4 time that you weren't authorized to sign the  
5 two promissory notes that we looked at before  
6 lunch?

7 A. Not that I recall.

8 Q. Did you ever tell anybody at any  
9 time that you made a mistake when you signed  
10 the two promissory notes that we looked at  
11 before lunch?

12 A. Not that I recall.

13 Q. As you sit here right now, do you  
14 have any reason to believe that you were not  
15 authorized to sign the two documents that we  
16 looked at before lunch?

17 MS. DANDENEAU: Objection to form.

18 A. If -- if this is the -- the valid  
19 incumbency certificate, I mean, this does --  
20 this does detail who the signers are.

21 Q. Okay. And looking at that document,  
22 does that give you comfort that you were  
23 authorized to sign the two promissory notes  
24 that we looked at before lunch?

25 MS. DEITSCH-PEREZ: Object to the

1 WATERHOUSE - 10-19-21

2 form.

3 MS. DANDENEAU: Objection, form.

4 A. Yes.

5 Q. As of October 20th -- withdrawn.

6 I'm trying to take your mind back to  
7 a year ago, October 2020. Do you recall at  
8 that time that the boards of the retail funds  
9 were making inquiries about obligations that  
10 were owed by the advisors to Highland in  
11 connection with their 15(c) review?

12 MS. DANDENEAU: Objection to form.

13 A. I don't -- I don't recall.

14 Q. As of October 2020, you had no  
15 reason to believe you weren't authorized to  
16 sign the two promissory notes that we just  
17 looked at; correct?

18 MS. DANDENEAU: Objection, form.

19 MS. DEITSCH-PEREZ: Objection to  
20 form.

21 A. I didn't think about it in October  
22 of 2020, but I mean --

23 Q. Did you have any reason to believe  
24 at that time that you weren't authorized to  
25 sign the two notes that we just looked at?

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2 A. Not that I'm aware, no.

3 Q. Did you have any reason to believe a  
4 year ago that you made a mistake when you  
5 signed those two notes?

6 A. Not that I'm aware.

7 Q. A year ago you believed that HCMFA  
8 owed Highland the unpaid principal amounts that  
9 were due under those two notes; correct?

10 A. They're -- they're promissory notes  
11 that were -- as you presented, that were --  
12 that were executed. Whether they're valid or  
13 if there's other reasons, I didn't -- I don't  
14 know.

15 Q. I'm not asking you whether they're  
16 valid or not. I'm asking you for your state of  
17 mind. A year ago you believed that HCMFA  
18 was -- was obligated to pay the unpaid  
19 principal amount under the two notes that you  
20 signed; correct?

21 A. Yeah, I'm -- I'm -- yes.

22 Q. Thank you. Are you aware -- you're  
23 aware that -- that in 2017, NexPoint issued a  
24 note in favor of Highland in the approximate  
25 amount of \$30 million; correct?





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So if you and Mr. Sauter were having a factual discussion and him preparing his affidavit, et cetera, then go ahead and answer that. But if you were having a discussion as to our legal strategy in this lawsuit, or anything having to do with that, then do not answer that.

A. Okay. Yeah, I don't -- I don't  
I know how to make that distinction,  
I need to talk to counsel before I  
er, or if I can answer.

Q. Let me just ask you this question:  
Did -- did you have any conversation with  
Mr. Sauter about any payment of principal and  
interest prior to the time that you left

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2 conversation took place in 2021. You just  
3 don't remember if it was before or after you  
4 left Highland's employment. Do I have that  
5 right?

6 A. It was sometime this year. I  
7 don't -- I don't remember.

8 Q. Okay. Did you report this  
9 conversation to Mr. Seery at any point?

10 A. I don't believe so.

11 Q. Did you report this conversation to  
12 anybody at DSI at any time?

13 A. I don't recall.

14 Q. Do you have -- you don't have a  
15 recollection of ever doing that; correct?

16 A. Yeah, that's right. I don't recall  
17 doing that.

18 Q. Do you recall telling anybody at  
19 Pachulski Stang about the conversation you  
20 recall with Mr. Sauter?

21 A. No, I don't -- I don't recall.

22 Q. Did you tell any of the independent  
23 board members about your conversation with  
24 Mr. Sauter?

25 A. I don't recall.

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2 the same time each year?

3 A. Yes, it is -- it is around the same  
4 time every year.

5 Q. And what -- what time period of the  
6 year does the renewal process occur?

7 A. Approximately the September  
8 timeframe.

9 Q. During that process, in your  
10 experience, does the board typically conduct  
11 its own diligence and ask for information?

12 A. Does the board ask for lots of -- I  
13 mean, just -- I mean, lots of information as a  
14 part of that -- that -- as part of that board  
15 meeting and that process.

16 Q. Okay. And do you recall that the  
17 process in 2020 spilled into October?

18 A. Yes. Yes.

19 Q. Okay. And as part of the process in  
20 2020, the retail board asked -- asked what are  
21 referred to as 15(c) questions; right?

22 A. I guess I don't want to be -- they  
23 asked 15(c) -- are you saying they asked 15(c)  
24 questions and this is why it went into October  
25 or --



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2 Q. No, I apologize.

3 Do you have an understanding of  
4 what -- of what 15(c) refers to in the context  
5 of the annual renewal process?

6 A. Yes, generally.

7 Q. All right. What is your general  
8 understanding of the term "15(c)" in the  
9 context of the annual renewal process?

10 A. I -- I think 15(c) is the section  
11 that -- that -- you know, that -- that the  
12 board has to evaluate every year, the retail  
13 board. They have to, you know, go through,  
14 evaluate, and go through that approval process  
15 on a yearly basis.

16 Q. Okay.

17 MR. MORRIS: Can we put up on the  
18 screen Exhibit 36, please.

19 (Exhibit 36 marked.)

20 MR. MORRIS: I guess let's just  
21 start at the bottom so Mr. Waterhouse can  
22 see what is here.

23 Q. You see this begins with an email  
24 from Blank Rome to a number of people.

25 MR. MORRIS: And if we can scroll

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